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International Relations Task Force Meeting
Federal Relations (Federalism) Working Group

States and Nation Policy Summit
Grand Hyatt * Washington, DC
Thursday, December 5, 2013
2:30 p.m. – 5:30 p.m.

Public Chair: Representative Tim Moffitt (NC)
Private Chair: Brandie Davis (Philip Morris International)
Task Force Director: Karla Jones

TENTATIVE AGENDA

Welcome
Approval of the Minutes from the Annual Meeting

Federal Relations Working Group (Federalism)

Welcome & Brief Update on the Federalism Subcommittee Meeting

Presentation: The Road to Federalism Begins at the Statehouse – Restore the Balance

"Draft Checks and Balances in Government Amendment"

"Draft Equal State Suffrage Act"

Presentation: A Governing Partnership – States as an Independent Check on the Power of the Federal Government

"Draft Policy on Federalism Education Requirements for Public Attorneys"

Panel Discussion: Washington's Actions Are Felt in the States

International Relations Task Force

Presentation: Supporting Small Business and Economic Growth through Right to Repair

"Draft Resolution Affirming the Digital Right to Repair"
Dual-referral to Communications and Technology Task Force

"Draft Consumer Protection through Disclosure of Digital Rights Act"
Dual-referral to Communications and Technology Task Force

"Draft Act Protecting Digital Equipment Owners and Small Businesses in Repairing Digital Electronic Equipment"
Dual-referral to Communications and Technology Task Force

Presentation: Patent Trolls – One State's Perspective

"Draft Patent Troll Resolution"
Possible dual-referral to Civil Justice Task Force

Presentation: Restoring America's Global Leadership on Trade

"Draft Resolution on Country of Origin Labeling"

"Draft Cybersecurity Statement of Principles"
Dual-referral to Communications and Technology Task Force

Presentation: Zambia Update

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LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

International Relations Task Force Meeting
Federal Relations (Federalism) Working Group

Annual Meeting
The Palmer House Hilton * Chicago, IL * Chicago Room
Friday, August 9, 2013
2:30 p.m. – 5:30 p.m.

Public Chair: Representative Tim Moffitt (NC)
Private Chair: Brandie Davis (Philip Morris International)
Task Force Director: Karla Jones

Meeting Minutes

Welcome
Approval of the Minutes from the SNPS Meeting

International Relations Task Force

Presentation: Taipei Economic and Cultural Representative Office Presentation
Mr. Baushuan Ger, Director General (Taipei Economic & Cultural Office)

1. "Draft Resolution Urging the Presidential Administration to Sign Bilateral Investment Agreement with Taiwan"
Representative Liston Barfield, South Carolina

Q: How would an agreement with Taiwan affect the TPP? Would Taiwan become a member?

A: No. The two agreements would proceed separately from one another.

Vote
Motion made by Rep. Barfield for Adoption
Private Sector: no opposition
Public Sector: no opposition

Discussion of the IP Subcommittee's meeting
Senator Curt Bramble presented an overview of the discussion and announced that the next meeting will be held at SNPS. Members were invited to send proposals to Karla as to what subjects they would like discussed.

Presentation: Challenges in the US-India Trade Relationship
Mr. Stephen Ezell, Senior Analyst (Information Technology and Innovation Foundation)
India continues to stray from the free market policies that made it so successful. Indian economic policy is increasingly systematically designed to bolster domestic production at the expense of foreign competition and open global trade. These policies are harming American industries and costing us jobs on a daily basis. In order to address these challenges we need to first educate Indian policy makers that

these types of mercantilist polices are not the optimal way for India to realize the innovation-based economic growth it seeks but we also have to raise the pressure on India. Congress could start by withdrawing India's participation from the generalized system of preferences or GSP. Congress could also curtail India's participation in US development assistance programs, such as the US agencies for international development millennium challenge grant program, other pressure points could include the US slowing approval of India's application to revive LNG imports from the US or looking at the current immigration legislation and reevaluating the number of H1-B visas that India is entitled to annually.

2. "Draft Resolution to Highlight Challenges and Opportunities in the US-India Trade Relationship"
Representative Tim Moffitt, North Carolina

Vote
Private: No opposition
Public: No opposition

Presentation: Patent Assertion Entities and a Role for the States
Isaac Gorodetski, Esq., Project Manager-Center for Legal Policy (Manhattan Institute for Policy Research)
Patent trolls are companies that produce no goods or services themselves, but exist to acquire patent rights and to enforce them against business that *are* producing goods or services using related technologies. This practice is facilitated by lax patent law, and judicial districts sympathetic to patent trolls.

Q: Senator Payne: The fact that these people are going to court and winning suggests that there *is* some patent infringement. This is the settlement bill, and the settlement bill happens in the states, so maybe before we come back in December you could clarify what exactly the role of the states should be. I suspect we all agree to that, but we've seen it in plenty of venues besides patent. If you could work on some of that for us, it would certainly help me.

A: IG: This was our first glance at this issue as well and we're looking forward to delving more into it, in the actual report itself there's a lot more flesh to the bone regarding the solutions. Because the quality of these patents are so bad and there's also favorable judgments coming out of certain jurisdictions that you're questioning what analysis is being done and why is it being done differently from other places, so were going to look into that and see what we come up with.

Presentation: A View of a Transatlantic FTA from across the Pond
The Honorable Emma McClarkin, Member of the European Parliament, UK

Discussions are already underway to increase free trade and IP protections in the UK. We all need to come to the table in the spirit of free trade first and foremost. Emma McClarkin's group is aiming for 0% tariffs with an ambitious 2 year timetable. Both the Euro and US economy need a boost that can be delivered through this negotiation. Negotiations taking place in the UK now will be models for the rest of the world.

Q: Dr. Matthews: in the EU Parliament does trade break down across the traditional right-left barriers, or is it more the interest of various groups?

A: EM: The international trade is a key committee because it has powers of co-decision. The makeup is 50-50 right and left and very knife edge votes. I'm happy to help push these things on, but it can also slow things down, because other issues come up, social issues etc.

3. "Draft Resolution Supporting the Successful Negotiation of a Comprehensive and Commercially Meaningful Transatlantic Trade and Investment Partnership (TTIP)"
Representative Gene Whisnant, Oregon

Vote
Public: no opposition
Private: no opposition

4. "Updates to ALEC's Resolution Urging Congress to Pass the Trans-Pacific Partnership (TPP) Agreement"
Senator Curt Bramble, Utah
Agreement is flexible, and TPP has the potential to become the benchmark against which future trade frameworks will be measured for years to come.

Q: Sen. Payne: I have an amendment to throw out: p.2 line 55 I would delete 'give the' and insert 'strengthen' and then after 'the united states' I'd delete 'more?'. It reads a little stronger. I would also delete line 56 countering the growing power of the People's Republic of China and leave the 'and' in there. I throw that out there because I think this is a trade partnership agreement we're looking at, but there are other countries that are eventually going to look to joining the TPP, and I think if we have in our resolution 'countering one country's growing influence' that's not conducive to creating harmony in the region. I don't see this as necessary language considering the intent of the resolution.

A: Sen. Bramble: I concur. I find this a friendly amendment and support it.

Amendment Vote
Private: no opposition
Public: no opposition

Vote on amended resolution
Private: no opposition
Public: no opposition

Presentation: Update on Keystone XL Pipeline and Other International Energy News
Mr. Michael Whatley, Consumer Energy Alliance
Canada has the second largest oil reserves next only to Saudi Arabia. We get more oil from Canada than we do from the entire Persian gulf, and almost more than from OPEC. The US efforts to restrict access are as follows: 1. Development and implementation of 'low carbon fuel standard' 2. A series of state and local initiatives attempting to ban any fuels derived from the oil sands 3. Efforts to ban and block permitting of the keystone pipeline. We've had significant wins in that many of these programs have either failed, or have been introduced and turned down in states and cities.

On Keystone: The President rejected the original application, so TransCanada took the southern part of the pipeline and broke it up into a separate standalone project. That project is already under construction and has 4000 people in the field working under contract.

We would ask ALEC members to consider two things: 1. Put an op-ed in any paper in your district talking about the positive values of Keystone XL 2. When the public comment period comes up, we will have information for you to submit letters to the state department. It is crucial that they hear from state legislators.

In the history of presidential permits no permit application has ever been rejected that was properly completed and financed, prior to Keystone XL. Were very concerned about the precedential impact of this refusal.

Q: Rep. Ivory: How long will the Canadians' patience endure with our attempts to realize that energy is essential to life?
A: MW: I think that the fact that the conversation that we've had with the Ambassador and other reps, it has been made that this is the number one issue between the countries, and that if the pipeline is rejected over purely political reasons that will have a major impact on the relationship.

5. "Draft Resolution for Reform of Counterproductive Export Control Policies"
Senator Ann "AJ" Griffin, Oklahoma
This resolution simply requests that government entities overseeing restrictions on exports evaluate those restrictions and determine which are no longer necessary for the national interest so that they may be reformed or removed from our policy.

Q: Rep. Whisnant: Didn't we have a draft resolution similar to this two years ago?
A: Karla: We did but it dealt only with munitions and dual use items. This one is intended to cover more things, like LNG exports, coal exports, etc.

Vote
Private: no opposition
Public: no opposition

Presentation: Cybersecurity – A Role for the States
RADM Edward Masso, USN (ret.), Senior Fellow in Cybersecurity, Potomac Institute

Recent events have brought to light how problematic cybersecurity or lack of cybersecurity can be. There are 3 substantial surveillance programs: Prism, Keystroke, and Tempora which record every keystroke on your computer, your state, and your business. A number of businesses in some states have gone out of business because of stolen information.

In response to the joint US-Israeli attack on Iran's nuclear facilities in operation Olympic Flame, Congress created the Cyber Security Act of 2010 that demands increased public and private collaboration, especially using cyber security tools for critical infrastructure. There is also The International Cyber Crime and Reporting act of 2010 which requires you to alert homeland security to any cyber attacks you become aware of. A third problematic development is an act that would allow the president access to a kill switch that basically turns off the internet.

Today there's an environment where nothing is really protected. Here are our challenges:
-We're so dependent on the cyber environment that we can't just shut it down and start over. ISAAC.
- You get what you inspect, not what you expect.
- Hiring the right people
- Exercises that train employees to understand potential cyber risks and make them aware of the capacity of cyber hackers etc. the purpose of the exercises is to prepare.

Q: Would you have any objection to amending this resolution to include the principle that security measures must comply with the 4th amendment?
A: Moffitt: this resolution will not be voted on until December;
A: Admiral: I would only say that the side I was most vocal on was protecting security infrastructures within the state and of your citizens. I wouldn't object to your suggestion by a long shot. We are not harsh enough on rule breakers and that is not a way to effect change.

A: Payne: Your point is well taken, the point of the draft principles is to protect individual liberties so you're right that this is not ready for primetime. Please bring concerns back before December.

Comment: Clemmons: This is not a theoretical exercise. The South Carolina Department of Revenue was hacked a year ago, and all the sensitive information was taken from every taxpayer in the state. I thank Senators Cleary and Barfield in warning you not to take this lightly. Verify that you have the right testing going on of your IT security systems. Don't trust what your IT people tell you, get third party testing consultants to test the systems, for the good of your citizens.

6. <u>"Draft Statement of Principles on Cybersecurity"</u>
This Resolution will also be referred to the Communications and Technology Task Force.
Senator William Payne, New Mexico

Principles will be voted on in December, today is for discussion purposes only, additions to this resolution should be forwarded to Karla, we will entertain amendments at that time.

<u>Presentation: Domestic UAS (drone) Use – Challenges and Opportunities</u>
Representative Tyler August (WI Legislature)
Mr. Mario Mairena (AUVSI)

Mairena: UAS are not utilized as they are in theater. They cannot be weaponized, they do not have persistent surveillance. They must weigh below 40 pounds, they can only be flown during the day, the operator must maintain line of sight at all times. They weigh on average between 7-10 pounds. Their average flight time is from 15-90 minutes. Surveillance systems have been around for 75 years, the only difference here is that the operator is on the ground. Anti UAS legislation is being introduced in the guise of privacy. We as an industry take privacy very seriously, we have a code of conduct, we support the 4th amendment and we believe if anyone violates 4th amendment rights they should be held accountable and punishable to the full extent of the law.

Economic report states: upon the safe integration of unmanned aircraft systems in the national airspace system over the first three years there will be an economic impact of 13.6 billion dollars. It will go substantially for the foreseeable future accumulating to more than 82.1 billion dollars between 2015 and 2025. Integration of UAS into the national airspace will create 4000 manufacturing jobs and more then 70000 new jobs and were talking high paying jobs of $40,000 or more. We predict 103,000 new jobs by 2023

A current struggle is to have the government release airspace test sites for use by private companies. Most of these sites are owned by or near military installations, making it necessary to receive government approval for use. We're going to lose huge companies to overseas operations because we're not providing them with the freedom they need to test and manufacture these products.

Uses of UAS: border security, arctic research, firefighting, flood monitoring, crop dusting, mining, farming, industrial logistics, asset monitoring, port security, construction, cargo, volcanic research, search and rescue, filmmaking, wildlife monitoring.

August: Our bill does 2 main things:

1. Reign in law enforcement use of UAS to address 4th amendment concerns (for example to keep neighbors from spying on neighbors). We don't want to impede economic growth, but we do need to set up standards for local law enforcement.

Mairena: We promote transparency without re-inventing the wheel – we propose using the same standards as the international association of chiefs of police. We want the same transparency from manned to unmanned.

Conclusion of IR portion, moving on to federalism:

Federal Relations Working Group (Federalism)

Welcome & Brief Update on the Federalism Subcommittee Meeting
Quotes from the federalist papers to the effect that checks and balances come from two distinct places, from the branches of federal government and from the state legislatures.

Presentation: How the State Legislatures United Compact Would Check and Balance Federal Overreach
Mr. Nick Dranias, Director of Policy Development & Constitutional Government (Goldwater Institute)
We as the many states are more powerful in acting against Washington if we all act together.
Our goal with this legislation is to create a body where, much like ALEC, state legislators can come together to debate and respond to issues of federal government intimidation. Our goal is to return the states to their original role in horizontally checking the federal government. Imagine if, when TARP was being debated, state legislators had a vehicle like this, where states could send delegates to a place to debate an amendment that would take away the federal government's power to bail out banks. We want to give the states a portion of the power they had when they controlled the US senate, to give them a vehicle in real time that is persistent and permanent that can respond to federal overreach effectively.

7. "Draft State Legislatures United Compact"
Representative Yvette Herrell, New Mexico
Legislators need a body that will persist over time and function like the US senate did before the 17th amendment removed the states from Congress. This compact will do just that.

Q: If the compact adopts model legislation, would the states be required to pass it? Or introduce it?
A: The language requires only that it be introduced in the committee that it originally appointed the delegates to the meeting it doesn't require it to be passed, only to be introduced.

Vote
Public: no opposition
Private: no opposition

8. "Draft Commission on Federalism Act"
Rep. Josh Clark
This act will achieve the following:
1. Put together a commission that would review and evaluate federal legislation, and provide a couple different responses as to measures that could be taken.
2. Involve 7 members of the commission.
3. Build a public record of documented grievances so the public can be aware of and provide a report for each legislator.
4. Require a response to evaluation by a specific date.
5. Team with other states to send other delegations to Washington to clearly communicate their stance on the federal bill.

Motion to return name to "Commission on Federalism"

Vote on Motion
Public: no opposition
Private: no opposition

Vote on Act
Public: no opposition
Private: no opposition

10. "Draft Resolution on State Jurisdiction and Supremacy"
Rep. Clark
Encourages states to begin to collaborate with one another in relating to the federal government.

Vote
Public: no opposition
Private: no opposition

9. Updates To: "Draft Resolution Demanding that Congress Convey Title of Federal Public Lands to the States"
Rep. Laura Reinbold from Alaska

The Political Subdivision Jurisdiction Act
Ultimately this allowed counties to take back control of public lands that have been neglected by the federal government when that neglect results in a safety or health hazard.

Vote
Public: no opposition
Private: no opposition

11. "Draft State and Political Jurisdiction Act"
Rep. Laura Reinbold from Alaska

Rep. Clemmons: Motion to strike "be it resolved" from line 10

Vote on Motion
Public: no opposition
Private: no opposition

Vote on Resolution
Public: no opposition
Private: no opposition

Resolution to adopt transfer of public lands resolution
Rep. Clemmons of South Carolina:
Transfer of federally held public lands to states.

Vote
Public: no opposition
Private: no opposition

Presentation: Putting Federalism into Action – Tools and Solutions for Keeping Government Local

Ms. Holly Carter, Manager (Federalism in Action)

Extensive discussion on incorporating Native American rights and concerns into federal land transfer legislation.

Presentation: ALEC Policy Relating to the Balanced Budget Amendment and Limited Delegation Act

Mr. David Biddulph, Co-Founder (Balanced Budget Amendment Task Force)
Mr. Scott Rogers, Executive Director (Balanced Budget Amendment Task Force)

According to article 5, if 34 states wanted a change to the constitution they could do it.
This act: Defines what a delegate is; defines that states have the right to select their delegates to any article 5 convention; calls for recall of faithless delegates with civil or criminal penalties in place; requires each delegate to take an oath to follow their states instructions; requires delegates to attend the convention under the principle of one state one vote.

Meeting adjourned at 5:30 pm

11-9 vote public

Draft State Enfranchisement Act

Section 101 Title.
This chapter is known as the "State Enfranchisement Act."

Section 102 Nominations by the State Legislature.

A. Any qualified elector, who has not been nominated as a candidate by primary election or by party committee, may be nominated as a candidate for the United States Senate pursuant to this section.

B. A nomination petition stating that the United States Senate is the office to be filled, the name and residence of the candidate and other information required by this section shall be filed with each Presiding Officer of the legislature of the state of _____. The petition shall be filed at the same time as primary nomination papers and petitions are required to be filed.

C. The nomination petition shall be in substantially the following form:

"The undersigned, duly elected legislators of the state of _____, do hereby nominate _____, who resides at _____ in the county of _____, as a candidate for the office of United States Senator at the general (or special, as the case may be) election to be held on the _____ day of _____, _____.

I hereby declare that I have not signed the nomination petitions of any candidate for the office to be voted for at any primary election, and I do hereby select the following designation under which name the said candidate shall be placed on the official ballot: State Legislature Candidate for United States Senate."

D. The nomination petition shall be signed by at least twenty per cent of the then-sitting members of the legislature of the state of _____.

E. Within thirty (30) days of the nomination petition being duly filed with each Presiding Officer of the legislature of the state of ____, a committee of the whole in each chamber of the Legislature shall be called to consider each such nomination made and shall promptly and simultaneously vote upon each such candidate nominated for the office of United States Senator. The candidate with the greatest number of votes in favor of his or her candidacy shall be deemed eligible for the office of United States Senator and to have his or name printed on the official ballot for the office of United States Senator at the ensuing general (or special, as the case may be) election.

NO

The Benefits of the State Enfranchisement Act Model Legislation

Nick Dranias, Goldwater Institute Constitutional Policy Director

Executive Summary: The State Enfranchisement Act Model Legislation would allow the state legislature to nominate and place on the general election ballot candidates of their own choosing, alongside candidates elected through traditional primaries or caucuses, based on the timeline for placing nonpartisan candidates on the general election ballot.

Background: The Seventeenth Amendment excluded state legislatures from being represented by Senators of their choice in the United States Senate. This deprived the States from having a significant role in developing national policy—except through the constitutional amendment process under Article V. As a result, the federal government has increasingly encroached on the local jurisdiction of State governments, which would otherwise have been jealously guarded by the States through their Senator-representatives. This has had at least three bad policy effects.

First, denying the States representation in the U.S. Senate has diverted the federal government from what it does best—focusing on interstate relationships, foreign affairs, and national defense—and thereby has encouraged the federal government to displace the States from what they do best—determining local policies tailored to the unique circumstances of their particular region and communities.

Second, by making U.S. Senators less responsive to state legislatures, the U.S. Senate has actually become less responsive to the People of a particular State. This is because state legislators are more frequently elected (with shorter terms), are earlier in their political careers, can be confronted in person by constituents more easily, and are, consequently, generally more responsive to the People of the State than a U.S. Senator who is popularly elected every six years. For this reason, under the Constitution's original design, the People of a given State would have a better ability to influence the policies promoted by their U.S. Senator through their respective state legislator, who could augment the influence of the People by leveraging his or her power to elect U.S. Senators.

Third, and relatedly, the exclusion of the States from a role in setting national policy through a senatorial representative prevents them from checking and balancing federal overreach when that overreach intrudes into areas of traditional state concern. One obvious example is the fact that the States have been disabled from guarding against overreaching treaties and statutes that implement treaties—just like the statute at issue in the recent *Bond vs. United States* case, in which a Chemical Weapons Treaty was implemented in a federal law that effectively deems the chemical contents of a typical kitchen cabinet the equivalent of a chemical weapons cache. Another example is the unfolding Obamacare implementation debacle, in which the federal government has undertaken to remake local insurance markets with disastrous consequences.

The Solution: The model legislation under consideration by ALEC represents a reasonable compromise between the public policy goals of the 17th Amendment and the Constitution's original design of States having representation in the U.S. Senate.

The original justification for the 17th Amendment included concerns that state legislatures were occasionally dilatory in appointing U.S. Senators, which frustrated the business of the federal government, and also that state legislatures were more easily captured by local special interests, who would use that influence to corrupt U.S. Senators. The introduction of direct popular election of U.S. Senators undoubtedly minimizes these risks, which is a good policy objective. The ALEC model legislation preserves this good policy objective by respecting the direct popular election of U.S. Senators in the general election. But it also increases the chances of achieving the good policy objectives of the Constitution's original design of state representation in the U.S. Senate by giving state legislatures a role in proposing general election candidates. This new role would make the policy interests of state legislatures much more relevant to the political ambitions of candidates for the U.S. Senate. It would encourage senatorial candidates and incumbents alike to give greater weight to the concerns of state legislatures—if only to avoid competing in the general election against a state legislature-proposed candidate; and it would give the People the option of voting for a senatorial candidate in the general election who would best represent the interests of the State as a sovereign body.

With state legislatures enjoying more relevancy and their concerns receiving greater consideration by U.S. Senators, it is likely that federal government would encroach less often on the local jurisdiction of State governments, which would minimize the diversion of the federal government from what it does best and displacement of State and local government from what they do best. It would make U.S. Senators more responsive to the People of a particular state as represented by their state legislators. It would encourage U.S. Senators to think more carefully about restraining federal overreach when that overreach intrudes into areas of traditional state concern. It would not materially increase the "pork barrel" federal funding of state-based projects because U.S. Senators already have a huge incentive to "bring home the bacon" under direct popular elections and that incentive is not likely significantly increased by increasing the clout of the state legislature relative to other political interest groups. In short, the model legislation maximizes the public policy gains from both the 17th Amendment and the Constitution's original design.

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OK

Draft Checks and Balances in Government Amendment

Article 1 Title.

This article is known as the "Checks and Balances in Government Amendment."

Article 2 Denial of State Personnel and Resources to Unconstitutional Acts.

A. The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.

B. To protect the people's freedom and to preserve the checks and balances of the United States Constitution, this state may exercise its sovereign authority to restrict the actions of its personnel and the use of its financial resources to purposes that are consistent with the constitution by doing any of the following:

1. Passing an initiative or referendum pursuant to [specify relevant constitutional provision].
2. Passing a bill pursuant to [specify relevant constitutional provision].
3. Pursuing any other available legal remedy.

C. If the people or their representatives exercise their authority pursuant to this section, this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.

O/C passed

Draft Model Policy on Federalism Education Requirements for Public Attorneys

Whereas, the High Court has reiterated time and again that the sovereignty, jurisdiction, and even the supremacy of the States in their constitutional spheres is essential to the balance between State and Federal governing partners; and

Whereas, Coleman v. Thompson observes that "the Constitution divides authority between federal and state governments for the protection of individuals … [and that] federalism secures to citizens the liberties that derive from the diffusion of sovereign power" and

Whereas, just last year the United States Supreme Court admonished in NFIB v. Sebelius, "The independent power of the States serves as a check on the power of the federal government" and "States are separate and independent sovereigns. Sometimes they have to act like it."

Whereas, legislators, executive branch officers, and local government officials attempting to exert any check upon federal government actions are frequently stopped by well-intentioned public attorneys who seem to lack a thorough understanding or appreciation of the rights, powers, authorities and jurisdiction of the "separate and independent sovereign" State, or subdivisions thereof which they are charged with representing; and

Whereas, Thomas Jefferson admonished "it must be done by the states themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the general government;" and

Whereas, it is imperative that attorneys who represent "separate and independent sovereign" States and their subdivisions have a clear understanding of the jurisdiction, rights, powers and authorities of the States as well as the fundamental principles of federalism;

Therefore be it resolved that the state of [INSERT STATE] establish a continuing legal education program for public attorneys to ensure that they will have a comprehensive understanding of the foundational constitutional principle that "The powers not delegated to the United States by the Constitution … are reserved to the States respectively, or to the people."

CONSUMER PROTECTION THROUGH DISCLOSURE OF DIGITAL RIGHTS ACT

An Act Protecting Consumers and Business by requiring pre-purchase disclosure of terms and conditions for digital parts and machines.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1. The General Laws are hereby amended by inserting after (insert applicable statute), the following Chapter (number chapter):

Section (1) As used in this chapter, the following words shall, unless the context clearly contains a different meaning, have the following meanings:

"Consumer", the buyer of any electronic device or machine, including both individual and corporate buyers.

"Digital Electronic Device", any part or machine manufactured using digital electronic parts.

"Machine Code", any embedded or essential operational code provided with the machine or part.

"Original Equipment Manufacturer ("OEM")", the manufacturer of the digital part of machine and any of its authorized distribution channels including business partners, distributors, retail and internet sales channels.

"Trade Secret", or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Section (2) any OEM offering equipment for sale or use in the State of (Insert State), shall provide written details of how each of the policies set forth in Section 3 will apply to purchases or legal transfers of their products. In all cases, policy disclosures shall be available to any prospective buyer at least one week prior to purchase, or as set forth below:

2.a. OEMs may publically post policies on the OEM controlled website, provided that the policies are available without any login or password requirement on the part of the prospective buyer.

2. b. OEMs may provide downloadable or printed materials at the retail point of purchase, provided such materials are clearly and visibly available to any prospective buyer without the assistance of a login, password, or local representative.

2. c. All such policies must be clearly dated as to effective date. Policy changes must be clearly noted and may be not applied retroactively, without the written consent of the buyer. Should the buyer refuse to agree to a policy change, the policy in force at the time of the purchase shall control.

Section (3) All OEMs shall disclose their official policy to prospective buyers on all of the following points according to the requirements listed in Section 2. The method, process, timeframe and pricing by which a buyer will access the library of support and repair documentation, including schematic diagrams and diagnostic repair codes; order service parts; access or order machine code patches, fixes, and updates; order, access, and use diagnostic software tools, including remote diagnostics and error codes; order repair tools, including software tools.

Section (4) All OEMS shall disclose to any prospective buyer, at least one week prior to the purchase, the breakdown of pricing for hardware elements and software license elements for each product offered for purchase. Hardware elements shall be treated as depreciable tangible assets and be fully transferrable between parties. Software licenses shall be separate and specifically provided at least one week prior to purchase for the evaluation and negotiation of the terms and conditions.

AN ACT PROTECTING DIGITAL EQUIPMENT OWNERS AND SMALL BUSINESSES IN REPAIRING DIGITAL ELECTRONIC EQUIPMENT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after (Insert Applicable Statute) the following chapter:- CHAPTER (Insert Applicable Statute)

Section (1) As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:

"Original Equipment Manufacturer ("OEM") ", any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new digital electronic parts of machines to consumers or other end users pursuant to a (Insert Applicable Statutes) and is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment to said parts or machines.

"Embedded Software", any programmable instructions provided on firmware with the machine or part delivered with the machine or part for the purposes of machine operation, including all relevant patches and fixes made by the manufacturer for this purpose, including, but not limited to synonyms "basic internal operating system", "internal operating system", "machine code", "assembly code", "root code", "microcode. "

"Authorized Repair Provider", an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a separate business organization or individual, as defined in (Insert Applicable Statute), license to use a trade name, service mark or related characteristic for the purposes of offering repair services under the name of the manufacturer. .

"Fair and Reasonable Terms". In determining whether a price is on "fair and reasonable terms," consideration may be given to relevant factors, including, but not limited to, the following:

(i)The net cost to the authorized repair organizations for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the product. Amortized capital costs for the preparation and distribution of the information may be included.

(iii) The price charged by other manufacturers for similar information.

(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.

(v) The ability of aftermarket technicians or shops to afford the information.

(vi) The means by which the information is distributed.

(vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.

(viii) Inflation.

"Data Security Feature", any feature of an electronic device designed for the sole purpose of preventing the use of an electronic device in which it is installed from starting without the correct activation or authorization code.

"Documentation", any manuals, diagrams, reporting output, or service code descriptions provided to the authorized repair provider for the purposes of effecting repair.

"Service Parts", any replacement parts, either new or used, made available by the manufacturer to the authorized repair provider for the purposes of effecting repair.

"Independent Repair Provider", a person or business operating in the (Insert State) that is not affiliated with a manufacturer or manufacturer's authorized dealer of digital electronic equipment , which is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment; provided, however, that, for the purposes of this chapter, a manufacturer shall be considered an independent repair provider for purposes of those instances when said dealer engages in the diagnosis, service, maintenance or repair of digital electronic equipment that are not affiliated with the manufacturer.

"Digital Electronic Equipment", a part or machine originally manufactured for distribution and sale in the United States, excepting:

Insert Exclusions ____

"Owner", a person or business who owns or leases a digital electronic product purchased or used in the State of (Insert State).

"Remote Diagnostics, any remote data transfer function between a digital electronic machine and the provider of repair services including for purposes of remote diagnostics, settings controls, or location identification.

"Trade secret", anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Section (2): Except as provided in subsection (2)(e), for Manufacturers of digital electronic parts and machines, sold or used in the State of (Insert State) shall make available for purchase by owners or independent repair facilities of products manufactured by such manufacturer and by the same diagnostic and repair information, including repair technical updates, updates and corrections to firmware, and related documentation in the same manner such manufacturer makes available to its authorized repair channel. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities upon fair and reasonable terms.

(2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any independent repair provider or other third party provider in a format that is standardized with other manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer to continue purchasing diagnostic, service, or repair information in a proprietary format, unless such proprietary format includes diagnostic, service, repair or dealership operations information or functionality that is not available in such standardized format.

(2)(c)(i) Each manufacturer of digital electronic products sold or used in the State of ~~(Insert State)~~ shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and remote communications capabilities that such manufacturer makes available to its own repair or engineering staff or any authorized repair channels. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

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~~(2)(c)(ii) Any diagnostic tool or information necessary to diagnose, service or repair a digital electronic part or machine that a manufacturer sells to any independent repair provider in a manner and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the authorized repair provider obtains the same diagnostic tool or information necessary to diagnose, service or repair a digital electronic part of machine, shall also be offered to the authorized repair provider in the same manner and on the same terms and conditions as provided to such independent repair provider. Any manufacturer that sells to any independent repair provider any diagnostic tool necessary to diagnose, service or repair a digital electronic part of machine and such diagnostic tool communicates with the digital electronic part or machine using the same non-proprietary interface used by other manufacturers, the manufacturer delivering such a diagnostic tool shall be prohibited from requiring any authorized repair providers from continuing to purchase that manufacturer's proprietary tool and interface unless such proprietary interface has a capability not available in the non-proprietary interface.~~

Comment [G1]: Delete – part of the auto bill regarding standardized interfaces

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(2)(c)(iii) Each manufacturer that provides diagnostic repair information to aftermarket tool, diagnostics, or third party service information publications and systems shall have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

~~(2)(d)(ii) No manufacturer shall be prohibited from making proprietary tools available to authorized repair providers if such tools are for a specific specialized diagnostic or repair~~

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~~procedure developed for the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the product was produced, and where original product design was not originally intended for direct interface through the non-proprietary interface set out in (2)(d)(i). Provision of such proprietary tools under this paragraph shall not constitute a violation of this chapter even if such tools provide functions not available through the interface set forth in (2)(d)(i), provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(d)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in (2)(d)(i), for diagnostic or repair procedures that fall outside the provisions of (2)(d)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(d)(i).~~

(2)(e) Manufacturers of digital electronic equipment or parts sold or used in the State of (Insert State)for the purpose of providing security-related functions may not exclude diagnostic, service and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic module shall be obtained by owners and independent repair facilities through the appropriate secure data release systems.

~~(2)(f) With the exception of remote diagnostics and repair information that is provided to authorized repair providers necessary to diagnose and repair a customer's digital electronic part or machine, and not otherwise available to an independent repair provider via the tools specified in 2(c)(i) and 2(d)(i) above, nothing in this chapter shall apply to any other remote or information service, diagnostic or otherwise, delivered to or derived from the digital electronic machine by mobile communications; provided, however, that nothing in this chapter shall be construed to abrogate an existing remote diagnostic services or other contract that exists between a manufacturer or service provider, a digital electronic machine, and/or a manufacturer. Nothing in this chapter shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.~~

Comment [G2]: Delete – relates to standardized interface provisions in the Auto Bill

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Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section (4) Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any provision of (Insert Applicable Statute)or the terms of any authorized repair provider executed and in force between an authorized repair provider and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant to such authorized repair agreement; provided, however, that any provision in such a authorized repair provider that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section (5) Nothing in this chapter shall be construed to require manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic and

repair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

Section (6)(a) In addition to any other remedies that may be available under law, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of (Insert Applicable Statute).

Section (6)(b) An independent repair provider or owner who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this chapter must notify the manufacturer in writing through the (Insert Appropriate Entity) and give the manufacturer thirty (30) days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent (Insert Applicable Statute) litigation.

Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in the superior court, or if applicable in the federal district court for the district of (Insert State). Such complaint shall include, but not be limited to the following:

(i) written information confirming that the complainant has attempted to acquire and use, through the then available standard support function provided by the OEM all relevant diagnostics, tools, service parts, documentation, and updates to embedded software , including communication with customer assistance via the manufacturer's then standard process, if made available by such manufacturer;

(ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's diagnostic tool necessary for such repair; and

(iii) evidence of manufacturer notification as set out in (6)(b).

Section (6)(d) Except in the instance of a dispute arising between an original equipment manufacturer and its authorized repair provider related to either party's compliance with an existing authorized repair agreement, which is required to be resolved pursuant to (Insert Applicable Statute) , an authorized repair provider shall have all the rights and remedies provided in this chapter, including, but not limited to, in the instance when exercising rights and remedies as allowed as an independent repair facility under (insert applicable statute).

AN ACT PROTECTING DIGITAL EQUIPMENT OWNERS AND SMALL BUSINESSES IN REPAIRING DIGITAL ELECTRONIC EQUIPMENT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after (Insert Applicable Statute) the following chapter:- CHAPTER (Insert Applicable Statute)

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"Embedded Software", any programmable instructions provided on firmware with the machine or part delivered with the machine or part for the purposes of machine operation, including all relevant patches and fixes made by the manufacturer for this purpose, including, but not limited to synonyms "basic internal operating system", "internal operating system", "machine code", "assembly code", "root code", "microcode. "

"Authorized Repair Provider", an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a separate business organization or individual, as defined in (Insert Applicable Statute), license to use a trade name, service mark or related characteristic for the purposes of offering repair services under the name of the manufacturer. .

"Fair and Reasonable Terms". In determining whether a price is on "fair and reasonable terms," consideration may be given to relevant factors, including, but not limited to, the following:

(i)The net cost to the authorized repair organizations for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the product. Amortized capital costs for the preparation and distribution of the information may be included.

(iii) The price charged by other manufacturers for similar information.

(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.

(v) The ability of aftermarket technicians or shops to afford the information.

(vi) The means by which the information is distributed.

(vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.

(viii) Inflation.

"Data Security Feature", any feature of an electronic device designed for the sole purpose of preventing the use of an electronic device in which it is installed from starting without the correct activation or authorization code.

"Documentation", any manuals, diagrams, reporting output, or service code descriptions provided to the authorized repair provider for the purposes of effecting repair.

"Service Parts", any replacement parts, either new or used, made available by the manufacturer to the authorized repair provider for the purposes of effecting repair.

"Independent Repair Provider", a person or business operating in the (Insert State) that is not affiliated with a manufacturer or manufacturer's authorized dealer of digital electronic equipment , which is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment; provided, however, that, for the purposes of this chapter, a manufacturer shall be considered an independent repair provider for purposes of those instances when said dealer engages in the diagnosis, service, maintenance or repair of digital electronic equipment that are not affiliated with the manufacturer.

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Section (2): Except as provided in subsection (2)(e), for Manufacturers of digital electronic parts and machines, sold or used in the State of (Insert State) shall make available for purchase by owners or independent repair facilities of products manufactured by such manufacturer and by the same diagnostic and repair information, including repair technical updates, updates and corrections to firmware, and related documentation in the same manner such manufacturer makes available to its authorized repair channel. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities upon fair and reasonable terms.

(2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any independent repair provider or other third party provider in a format that is standardized with other manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer to continue purchasing diagnostic, service, or repair information in a proprietary format, unless such proprietary format includes diagnostic, service, repair or dealership operations information or functionality that is not available in such standardized format.

(2)(c)(i) Each manufacturer of digital electronic products sold or used in the State of ~~(Insert State)~~ shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and remote communications capabilities that such manufacturer makes available to its own repair or engineering staff or any authorized repair channels. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

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Comment [G1]: Delete – part of the auto bill regarding standardized interfaces

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(2)(c) Manufacturers of digital electronic equipment or parts sold or used in the State of (Insert State)for the purpose of providing security-related functions may not exclude diagnostic, service and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic module shall be obtained by owners and independent repair facilities through the appropriate secure data release systems.

Comment [G2]: Delete – relates to standardized interface provisions in the Auto Bill

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Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section (4) Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any provision of (Insert Applicable Statute)or the terms of any authorized repair provider executed and in force between an authorized repair provider and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant to such authorized repair agreement; provided, however, that any provision in such a authorized repair provider that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section (5) Nothing in this chapter shall be construed to require manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic and

repair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

Section (6)(a) In addition to any other remedies that may be available under law, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of (Insert Applicable Statute).

Section (6)(b) An independent repair provider or owner who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this chapter must notify the manufacturer in writing through the (Insert Appropriate Entity) and give the manufacturer thirty (30) days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent (Insert Applicable Statute) litigation.

Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in the superior court, or if applicable in the federal district court for the district of (Insert State). Such complaint shall include, but not be limited to the following:

(i) written information confirming that the complainant has attempted to acquire and use, through the then available standard support function provided by the OEM all relevant diagnostics, tools, service parts, documentation, and updates to embedded software , including communication with customer assistance via the manufacturer's then standard process, if made available by such manufacturer;

(ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's diagnostic tool necessary for such repair; and

(iii) evidence of manufacturer notification as set out in (6)(b).

Section (6)(d) Except in the instance of a dispute arising between an original equipment manufacturer and its authorized repair provider related to either party's compliance with an existing authorized repair agreement, which is required to be resolved pursuant to (Insert Applicable Statute) , an authorized repair provider shall have all the rights and remedies provided in this chapter, including, but not limited to, in the instance when exercising rights and remedies as allowed as an independent repair facility under (insert applicable statute).

BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Patent Troll Prevention Act.

Section 2. For purposes of this act:

(1) "Demand letter" means a letter, e-mail, or other communication asserting or claiming that the target has engaged or may be engaging in patent infringement.

(2) "Target" means a Nebraska person:

(A) who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(B) who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(C) whose customers have received a demand letter asserting that the person's product, service, or technology has infringed a patent.

Section 3. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

(a) A person shall not make a bad faith assertion of patent infringement.

(b) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(1) The demand letter does not contain the following information:

(A) the patent number;

(B) the name and address of the patent owner or owners and assignee or assignees, if any; and

(C) factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent

(2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand letter lacks the information described in subdivision (1) of this subsection, the target requests the

information, and the person fails to provide the information within a reasonable period of time.

(4) The demand letter demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and:

(A) those threats or lawsuits lacked the information described in subdivision (1) of this subsection; or

(B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(c) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in subdivision (b)(1) of this section.

(2) Where the demand letter lacks the information described in subdivision (b)(1) of this section and the target requests the information, the person provides the information within a reasonable period of time.

(3) The person engages in a good faith effort to establish that the target has infringed or may be infringing the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

Section 4. DEMAND LETTER REGISTRY

(a) Any person who sends, transmits, or otherwise conveys demand letters to 25 or more targets in any 180 day period shall notify the Attorney General. Such notification shall include the name and address of each target to which demand letters were sent.

Section 5. ENFORCEMENT; REMEDIES; DAMAGES

(a) The Attorney General shall have the same authority under this chapter as provided under [the Consumer Protection Act and Uniform Deceptive Trade Practices Act]. In an action brought by the Attorney General under this chapter the court may award or impose any relief available under [the Consumer Protection Act and Uniform Deceptive Trade Practices Act].

(b) This chapter shall not be construed to limit rights and remedies available to the State of Nebraska or to any person under any other law and shall not alter or restrict the Attorney General's authority under Chapter 59 with regard to conduct involving assertions of patent infringement.

Section 6. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Draft Resolution on Country of Origin Labeling

Whereas, free markets are one of ALEC's core guiding principles and we have much model policy that supports the enhancement of free markets and international trade; and

Whereas, Canada and Mexico are the United States' first and second largest trading partners respectively and that the growth of reciprocal trade should be encouraged as it is beneficial to all three countries; and

Whereas, the US mandatory Country of Origin Labeling (COOL) is inconsistent with our World Trade Organization (WTO) obligations and has been found by the WTO to discriminate against imported livestock creating challenges for Canadian and Mexican cattle and hog producers; and

Whereas, the US mandatory COOL law jeopardizes the viability of U.S. packing and U.S. feeding infrastructure, placing local and state economies at risk; and

Whereas, COOL undermines North American competitiveness in the global market; and

Whereas, the Canadian Ministers of Agriculture and International Trade, and their Mexican counterparts, have stated their intention to apply retaliatory tariffs on US exports to Canada and Mexico, our two largest export markets: now therefore be it

Resolved, that ALEC encourages the United States Congress to implement a legislative resolution that will build markets for U.S. products at home and overseas rather than implement additional regulations and requirements for our meat producers and processors and be it further

Resolved, that this resolution be submitted to the Secretary of the U.S. Department of Agriculture, USTR Ambassador Michael Froman, members of the U.S. House Committee on Agriculture, members of the U.S. Senate Committee on Agriculture, Nutrition and Forestry, the U.S. Secretary of State and other state and federal officials as it is deemed necessary.

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From The Desk Of
State Representative Charles "Doc" Anderson

Burdensome country -of-origin labeling (COOL) requirements are significantly damaging trade in North American livestock and are contrary to the international trade obligations of the United States

Regulations implementing the 2008 Farm Bill provisions on COOL for beef and pork place a heavy burden on American feeding operations, processors and retailers and effectively requires that cattle or hogs born or raised in Canada be completely segregated from US cattle and hogs. The May 23, 2013, amended COOL regulations make the situation even worse than the original 2009 regulations.

The American meat and livestock industries have benefitted from trade with Canada. For example, livestock from Canada increases competitiveness and supports jobs because U.S. processors are able to respond to gaps in supply, which helps plants run at capacity year round. This integrated industry is important for jobs and exports on both sides of the border, especially at times like this when cattle inventories are very low.

Damage to the Canadian livestock industry has been significant. Since COOL was introduced in 2008, exports to the U.S. of Canadian hogs have fallen by 41% and exports of cattle by 46%. Canadian industry has estimated total damages to be over $1 billion per year due to price declines, lost sales and added costs. The amended COOL regulations will increase these damages.

The amendments to the COOL regulations will not bring the U.S. into compliance with its international trade obligations. The WTO found that the COOL requirements created arbitrary and unjustifiable discrimination against Canadian cattle and hogs. The amended COOL regulations increase this discrimination and are certainly no "fix".

Maintaining discrimination against Canadian and Mexican livestock will jeopardize U.S. exports. Canada will consider all legal options, including, if necessary, the use of retaliatory trade restrictions against U.S. products. Canada and Mexico are America's two largest export markets with total exports in 2012 valued at $292 billion and $216 billion, respectively.

According to U.S. industry, there is a risk that thousands of jobs will be lost and that vulnerable meat packing establishments will close. One study finds a potential loss of 9,000 jobs in the packing industry alone from existing COOL. The American Meat Institute has indicated that 7 plants are particularly vulnerable to closing due to the new amendments to the COOL regulations.

The Farm Bill is the obvious choice to fix COOL. Canada's WTO challenge resulted in confirmation by the WTO of the discriminatory effects of COOL on Canadian cattle and hogs. The most effective solution remains an amendment to the draft Farm Bill currently before Congress. Possible solutions include using the NAFTA labeling rules based on where the animals are processed, enhancing the use of voluntary labeling, having the place of inspection confer origin, or a "Product of North America" label. We urge legislators to support a satisfactory resolution in the Farm Bill that would provide the requisite WTO compliance.

OR. TX + Nat Cattlemen's Associations support resolution...

WY:

OR: Wants no labeling }

Mr. Wood

RE: Model mCOOL Policy

From: **Katie Fast** (Katie@oregonfb.org) This sender is in your safe list.
Sent: Tue 12/03/13 3:58 PM
To: Rep Whisnant (rep.genewhisnant@state.or.us); jdwelshco@msn.com (jdwelshco@msn.com); genewhisnant@msn.com (genewhisnant@msn.com)
Cc: Ian Tolleson (Ian@oregonfb.org)

Representative,

I sent a response earlier from my iphone, but I am not sure it went through.

Oregon Farm Bureau supports Country of Origin labeling. They want consumers to have the information to choose where their food was grown. We have some of the most stringent agriculture and environmental regulations; this is one way to recognize the work and effort that goes into their product.

I am not sure what American Farm Bureau or other state Farm Bureau's positions would be.

If you have any questions, please call my cell 503-510-5293. Katie

---

From: Rep Whisnant [mailto:rep.genewhisnant@state.or.us]
Sent: Tuesday, December 03, 2013 11:10 AM
To: Katie Fast; jdwelshco@msn.com
Subject: FW: Model mCOOL Policy

Katie and Jim,

Please take a look at resolution and give feedback to Rep. Whisnant.

Cell number 541 419 1843

genewhisnant@msn.com

He is on his way to DC.

ALLIANCE OF AUTOMOBILE MANUFACTURERS

803 7th Street, NW
Suite 300
Washington, DC 20001

Main Phone: 202-326-5500
Main Fax: 202-326-5567

Vicki Olson

Legislative Assistant

Representative Gene Whisnant

503 986-1453

District 53

Join My Mailing List

From: GENE and JOSIE WHISNANT [mailto:genewhisnant@msn.com]
Sent: Tuesday, December 03, 2013 10:59 AM
To: Rep Whisnant
Subject: Fwd: Model mCOOL Policy

Vicki

Please be sure jim welsh, Katie fast & Ian tolled on receive & comment

Gene

,

Sent from my iPhone

Begin forwarded message:

> **From:** Karla Jones <kjones@alec.org>
> **Date:** December 3, 2013 at 11:10:35 AM MST
> **To:** "genewhisnant@msn.com" <genewhisnant@msn.com>
> **Subject: Model mCOOL Policy**

Hi Rep. Whisnant,

Attached is the draft model policy for mCOOL as it currently stands. Let me know what changes you'd like made to it in advance of the meeting.

All the best,

Karla

Ms. Karla Jones

Director of International and Federal Relations

American Legislative Exchange Council (ALEC)

2900 Crystal Drive

Sixth Floor

Arlington, VA 22202

Direct 571-482-5017

Mobile 202-870-4221

Email kjones@alec.org

Web www.alec.org

Draft Statement of Principles for Cybersecurity

WHEREAS, it is the mission of the American Legislative Exchange Council (ALEC) to advance the principles of free markets, limited government and federalism; and

WHEREAS, effective cybersecurity is essential for the proper function of government and continued growth of the economy in cyberspace; and

WHEREAS, cyber challenges could pose an existential threat to the US economy, our national security apparatus and public health and safety;

THEREFORE, LET IT BE RESOLVED, that ALEC supports the following principles in formulating effective government policy regarding cybersecurity:

1. ***Effective cybersecurity measures reflect the global, borderless, and interconnected nature of cyberspace***

Cyberspace is a global and interconnected system of networks and users that spans geographic borders and traverses national jurisdictions. While recognizing government's important role to protect its citizens, the state and the U.S. governments should exercise leadership in encouraging the use of bottom-up, industry-led, and globally-accepted standards, best practices, and assurance programs to promote security and interoperability. We must also collaborate with trusted allies both to share information and to bolster defenses.

2. ***Effective cybersecurity measures are capable of responding and rapidly adapting to new technologies, consumer preferences, business models, and emerging threats***

Cyberspace is full of innovation and dynamism, with rapidly changing and evolving technologies. Cybersecurity measures must be equally dynamic and flexible to effectively leverage new technologies and business models, and changing consumer preferences, and address new, ever-changing threats.

3. ***Effective cybersecurity measures focus directly on threats and bad actors***

In cyberspace, as in the physical world, adversaries use instruments (in this case, technology and communications) to carry out crime, espionage, or warfare. Cybersecurity measures must enable governments to better use current laws, regulations, efforts, and information sharing practices to respond to cyber bad actors, threats, and incidents domestically and internationally.

4. ***Effective cybersecurity measures focus on awareness***

Cyberspace's owners include all who use it: consumers, businesses, governments, and infrastructure owners and operators. Cybersecurity measures must help these stakeholders to be aware of the risks to their assets, property, reputations, operations, and sometimes businesses, and better understand their important role in helping to address these risks. Industry should lead the way in sharing information with the appropriate government entities following an attack and collaborating with others in the private sector to share best practices.

5. ***Effective cybersecurity measures emphasize risk management***

Cybersecurity is not an end state. Rather, it is a means to achieve and ensure continued trust in various technologies and communications networks that comprise the cyber infrastructure. Cybersecurity measures must facilitate an organization's, whether it is the government or a private entity, ability to properly understand, assess, and take steps to manage ongoing risks in this environment.

6. ***Effective cybersecurity measures build upon public-private partnerships, existing initiatives, and resources***

Partnerships between government and industry has provided leadership, resources, innovation, and stewardship in every aspect of cybersecurity since the origin of the Internet. Cybersecurity efforts are most effective when leveraging and building upon these existing initiatives, investments, and partnerships.

ALEC American Legislative Exchange Council

LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM

Intellectual Property Subcommittee Meeting of the International Relations Task Force/Federal Relations (Federalism) Working Group

States and Nation Policy Summit
Grand Hyatt Washington * Washington, DC * Independence E
Wednesday, December 4, 2013

Public Co-Chair: Senator Curt Bramble (UT)
Acting Public Co-Chair: Representative Tim Moffitt (NC)
Task Force Director: Karla Jones

AGENDA

Welcome and Introductions
Representative Tim Moffitt (NC)

Discussion of How to Proceed on Patent Troll Model Policy

Presentation: Supporting Small Business and Economic Growth through Right to Repair
Ms. Gay Gordon Byrne (Digital Right to Repair Coalition)

Review of Model Policy Surrounding the Digital Right to Repair Issue
Representative Tim Moffitt

DRAFT RESOLUTION AFFIRMING THE DIGITAL RIGHT TO REPAIR

WHEREAS, it is the public policy of the State of [insert state name here] to promote the growth of the state's economy, and

WHEREAS, the economy now includes the sale and repair of millions of digital products every year, and

WHEREAS, sales of consumer electronics alone now generate than $200 billion in revenues for the global economy, and

WHEREAS, digital products include embedded "programming" on the chip or on the circuit board, and;

WHEREAS, a growing number of digital product manufacturers have taken to claiming that this machine-level code is "intellectual property" under the Copyright Act in order to prevent owners from controlling their purchases, and

WHEREAS, owners are being told that machines cannot be repaired because they contain intellectual property, that machines cannot be modified, and that machines cannot be resold because the intellectual property is not transferrable, and

WHEREAS, consumers are purchasing digital products unaware of these restrictions on their ability to repair and resell their purchases, and

WHEREAS, this practice has already been applied to thousands of different digital products ranging from consumer cell phones, to combine harvesters, to automobiles, to mainframe data center equipment, and to industrial controls, and

WHEREAS, consumers and their preferred repair professionals are increasingly being restricted from accessing diagnostic codes, product manuals, replacement parts, repair tools, and machine-level code critical to performing repairs and maintenance, and

WHEREAS, restricting access to any of the preceding elements makes repair either more difficult, illegal, or impossible;

WHEREAS, preventing modification, repair, and resale of digital products decreases the bottom line of the owner, and

WHEREAS, if the product cannot be repaired, most products with digital electronic parts have only scrap value and become e-waste;

WHEREAS, the key to supporting owner's rights to resell is to use their purchases as they see fit is to affirm that the embedded code that is delivered with the machine belongs to the machine, and

WHEREAS, hardware repair has no impact on licensed products, and

WHEREAS, license terms and conditions are external to the repair of equipment and users will still make their software license support arrangements separately, and

THEREFORE, LET IT BE RESOLVED, the State of [insert state name here] believes that unnecessarily interfering with the right to repair digital products is an affront to the principles of free markets and to private property rights, and

FURTHER, LET IT BE RESOLVED, the State of [insert state name here] calls for increased transparency and clarity on the part of digital products manufacturers in the terms and conditions of use, warranties, and license agreements for their products prior to purchase to assist consumers in making informed purchasing decisions, and

FURTHER, LET IT BE RESOLVED, the State of [insert state name here] calls upon the Congress of the United States to thoroughly investigate the issues concerning the right to repair and to take appropriate action through legislation if necessary.

Digital Right to Repair
(DRTR)

DRTR Minutes for Conference Calls: 11-18-13 and 11-25-13

The following questions and requests for clarifications came up for discussion

Sen Bill Hansell
541-969-3319
STATE REP (3)
7:00 PM

- Asked to Frame the Issue
- What is new territory?
- Why Now?
- Why States?
- Why this vehicle?
- Concern over impact/conflict with IP
- Warranty conflict
- Consumer Cost Impact

For the benefit of those that attended, for the upcoming call on the 25th, and for those that could not attend, the following may be helpful.

The Issue

Repair monopolies for digital assets are a relatively new problem as manufacturers have exploited the presence of digital programming ("IP") to eliminate competition for repair. Since all digital parts always include on-board programming, the revenue advantages of monopolistic agreements are increasingly tempting. Unless stopped, consumers, who own on average 25 digital devices per household, will find themselves no longer able to take their car to an independent local mechanic, or to call the local appliance repair for service on their refrigerator. The more products built with "smart" parts, the more products will be blocked from repair. It is simply too economically attractive to vendors to allow competition if they can block competition.

The equipment hasn't changed, but the policies have. Products that used to be considered hardware, and open to repair, have been shut off for repair. When independent competition is thwarted, not only does the manufacturer gain a non-competitive high-margin revenue stream, but control of repair also controls the replacement cycle for equipment. Control of the replacement cycle then destroys the secondary market.

Replacement of equipment rather than repair generates new revenues for product sales, but kills jobs in the entire secondary market, including warehousing, distribution, repair, resale, refurbishment, and leasing. Repair jobs in the US are effectively lost to factory jobs in Asia where most electronics are made. Broken devices become e-waste adding to landfill contamination problems. Replacement is excessively costly to consumers, business large and small, Industry, and Government.

Repair Monopoly Scope:

Many industries no longer have any competitive options for repair, such as those listed below. Many consumers confuse "Authorized Repair" with competition – which it is not. Authorized repair is controlled by the manufacturer, if it exists at all. Examples include:

- Medical Test (MRI, Ultrasound, Laboratory)
- Retail Point of Sale (Cash Registers, Kiosks, Credit Cards)
- Wholesale Distribution (RFID, Scanning, Logistics)
- Automobiles, Aircraft, Advanced Agricultural equipment
- Major Appliances (Refrigerators, Dishwashers, Microwave Ovens, Programmable Coffee Pots)
- HVAC, particularly "Smart" controllers
- Consumer Electronics (TV, Home Entertainment, Games)
- Computers, Networks large and small
- Cell phones, telephone networks, internet communications, data centers

What is New Territory?

Monopolization of Repair is not a new problem, bringing it to the States generically is a new approach. The Automotive Right to Repair in Massachusetts is a template for legislative action. The Massachusetts Bill won 86% support of the electorate in an irrelevant referendum.

Why Now?

The independent repair industry for large Information Technology assets has lost 90% of its opportunities to compete in the last 3 years. Our need to survive has created our sense of urgency. Digital parts repair is far wider than just IT, so we have been gathering support from other markets.

Why States?

States have a long history of protecting their citizens from predatory vendors. Many of the policies that restrict repair are a form of "Bait and Switch" because the true relationship of the vendor to the buyer is not honestly disclosed and policies impacting future use are not available pre-purchase for informed negotiation. Further, many policies are changed post-sale and the owner is bullied into submission through the use of tying agreements.

States also have an interest in assuring citizens of a level playing field for competition. State Government has an interest in controlling their own costs with opportunities for credible competition on bidding. States control the taxation of personal property, which value is reduced or wiped out by policies which accelerate or crush the value of technology products. If auto values are crushed by repair limitations, States would lose both sales tax and personal property tax revenue.

States are increasingly in the health-care business. Repair limitations on health care technology products are adding to the costs of health –care, and initiatives to increase the use of technology are exploding the use of products with restrictions on repair. Controlling health care costs requires attention to the cost of keeping technology up and running.

States control recycling and disposal of e-waste. The volume of e-waste can be reduced if products can be repaired and reused rather than tossed in the trash.

Why this Vehicle?

ALEC is a tremendous forum for bringing ideas forward for discussion and development of model legislation. States are already controlling repair issues, albeit piecemeal and unevenly, through legislation such as the Automotive Right to Repair passed in Massachusetts. We are tremendously excited about the work already done on our issue and looking forward to further collaboration.

Intellectual Property Concerns:

Repair, by itself, does not proliferate or pirate IP. Repair is a physical activity of parts replacement or reconnection of wires. The IP being blocked is hardware-specific and not independently valuable. The only user of an access key to a server (or a vehicle) is the owner of the item. The diagnostic routines written to self-test startup on an engine control module don't work on MRI machines. Further, the owner of the machine needs to get the code from the manufacturer, so blocked access to machine-specific code always blocks repair.

In addition, some product vendors (makers of cell phones and game equipment in particular) are struggling to control illegal use of their products post-sale. It is the "unlocking" of access to the deep levels of hardware programming (machine code) that is problematic. Unlocking to restore lost or damaged code for the machine in a repair is often the same unlocking that a hacker or pirate would use to modify a machine for illegal purposes. Repair should be a legal activity, but manufacturers have understandably elected to deny access for any purpose in order to better control the illegal use of their products. We want to work with stakeholders in these situations to find common ground.

Our simple goal is to open, or re-open, the opportunity for competitive repair for the vast majority of legal products and along with it restore the owner to control of the useful life of their equipment investment.

Cost Concerns to Consumers:

Consumers should be the beneficiaries of competition for repair. Manufacturers that rely on repair revenue to meet their sales targets are not innovating to create better products. Openly competitive markets push innovation.

Warranty Impact:

Buyers will most likely prefer to use warranty services when they are available and convenient. Independent or self-repair may void warranty.

Please continue to ask questions and challenge us to make our Bill worth of adoption in your State.

ALEC - DR2R Proposal

From: **Wayne C. Weikel** (WWeikel@autoalliance.org)
Sent: Tue 12/03/13 10:42 AM
To: genewhisnant@msn.com (genewhisnant@msn.com)

Good afternoon Representative,

I hope your flight in went smoothly.

Both Paul Cosgrove and Karla Jones informed me that you had an interest in the Digital Right to Repair proposals pending before the International Relations Task Force and may be inclined to oppose said initiatives. As I am sure Paul informed you, the Alliance opposes all three of the proposals.

After over a dozen years of debate, we were able to reach an agreement with the automotive aftermarket on an auto-only Right to Repair in Massachusetts. It took months and months of negotiations to work out all of the issues surrounding just automotive issues. The proposals presented by the Digital Right to Repair Coalition would affect EVERY digital product sold. All painted with the same broad, government mandate brush... just looking at my desktop, I can see about 12 different products (phone, mouse, keyboard, speakers, calculator, monitor, cable box, television, computer, clock, iPad, and cell phone) that would be subject to these onerous provisions, and that is just within eyesight!

Have you had a chance to read the model laws proposed? The one titled "*Consumer Protection Through Disclosure of Digital Rights Act*" is particularly problematic. I would love to hear someone explain to the manufacturer of my $0.99 calculator that they need to create a website to house repair documents detailing the process for repairs, cost of parts, and schematic diagrams!

The second model law, titled, "*An Act Protecting Digital Equipment Owners and Small Businesses in Repairing Digital Electronic Equipment*," is actually the Massachusetts law passed last year, only it has been subjected to a crude word search and replace to accommodate their needs. It seems anywhere the word vehicle appears, they inserted "Digital Electronic Equipment". Their incomplete understanding of the original bill really shines through in this draft - Section (2)(c)(iii) pertains to automotive third-party tool builders and is irrelevant here; Section (2)(e) relates to the formal process by which locksmiths have to register to gain access to electronic lock codes, and is specific only to autos; Section (6)(d) relates to specific auto dealer/auto manufacturer issues, why it is in here, I don't know!

We have been working with a host of affected ALEC members to make our opposition well known. Their proposals just run counter to everything for which ALEC is supposed to stand. Nothing in their ideas suggest free market or limited government. Moreover, if Massachusetts is the only state in the nation to pass something like this (albeit dramatically smaller in scope), maybe ALEC should proceed with caution! 9th Circuit yes

If there is anything I can provide to you or any outstanding questions we can answer, please do not hesitate to ask. We are looking to defeat these proposals outright at this meeting and not see them be postponed and given time to grow and fester.

I look forward to meeting you at this week's meeting.

Regards,

Wayne

Wayne Weikel & David

Director of State Affairs

P: 202-326-5550 | M: 617-877-7941 | wweikel@autoalliance.org

Digital Right to Repair

Background: Independent repair businesses are struggling to survive, but at the same time owners of equipment with digital electronics are unable to keep their equipment operational. Usable products and device components are scrapped instead of salvaged, fixed, and reused. We need to support local repair businesses' ability repair our products.

Consider if the only source of repair for your out-of-warranty car was the OEM's dealer. What if the dealer held the only codes to access the diagnostic system? What if you lived hundreds of miles from the nearest dealer and all the local mechanics were not allowed to repair your car? This is happening with electronics service today. Further, if a product cannot be economically repaired, it cannot be resold, which pushes consumers to replace their products more and more frequently.

Philosophy: Consumers have the right to repair their own products or have them serviced at independent repair facilities. Consumers and product owners should have the right to decide who repairs their products.

Policy Objectives: Allow owners and independent repair facilities to have access to the same diagnostic, repair information, and parts made available to the manufacturers' dealers and authorized repair facilities.

1. Manuals: Make service documentation easily accessible to equipment owners
2. Parts: Make service parts available at non-discriminatory pricing to third parties.
3. Diagnostics: Make troubleshooting and diagnostic tools, codes and service software available.
4. Software updates: Allow service providers access to machine code and firmware updates.
5. Tools: Make specialty tools available at non-discriminatory pricing to third parties.

Each of these areas has a specific section in the bill. If any of these five areas is blocked, then repair is made difficult, inefficient, or impossible. Policies intended to thwart independent repair also thwart owner-repair so the language must be applicable to owners who can then appoint agents. Authorized repair is NOT independent repair because the authorized repair facility is an extension of the manufacturer and is never directly competitive.

Advantages

Beyond returning balance to the rights of owners to control the use of their purchases, DRTR is also advantageous to States where repair is competitively available. The largest impact is on jobs - directly as a preferred location for repair jobs, but also for business and industry for which competitive repair is attractive for cost-control.

Four Ways that DRTR Supports Local Jobs:

1. Relocating repair businesses will be attracted to states with repair-friendly statutes. This will include depot-repair operations as well as customer-facing locations.
2. Businesses with heavy tech usage will prefer to settle in states with Digital Right to Repair because those businesses will be better able to manage their tech ownership costs. This is a definite draw for major data centers and cloud hosting facilities, as well as large distribution operations and medical centers. As more and more industrial products incorporate digital parts, farmers and owners of heavy industrial equipment will see dramatic benefits.

3. Repair jobs have been lost in many markets as product replacements (particularly consumer products) drop demand for repair. Fortunately, some gaps in the manufacturer's planned obsolescence strategy have been found by organizations like iFixit. Thousands of cell phone and tablet repair shops using iFixit repair guides have sprung up around the country in the last few years—representing tens of thousands of jobs that never existed before.
4. Products that are replaced rather than repaired are mostly manufactured in Asia and benefit Asian workers. Repair is a local activity which adds skilled US jobs, mostly small business and needed in rural as well as urban areas.

Additional benefits will flow from reducing total cost of ownership for consumers, business, industry and local governments by being able to confidently use older equipment. Product replacements will be focused on the innovative improvements in new products, and not by manufacturer policies limiting repair. There will be less recycling of e-waste, which directly lowers costs of services.

Why States?

Repair is a physical action made on a specific tangible asset. As such, digital repair is always local, in the same way that auto repair is local. The Automotive Right to Repair Bill that passed in Massachusetts clearly addressed issues that were under the state's jurisdiction.

States control contracts and have a particular interest in fair and equitable terms and conditions. Many of the limitations manufacturers impose on repair are part of purchase contracts, posing a significant problem for consumers as the "boilerplate" and rarely divulge the future costs of dealer-only repair requirements.

Repair does not infringe on copyright. Changes to copyright law might help clarify how much control an owner has over functions such as "unlocking," but the repair policies addressed in this bill are independent of copyright issues. Unlocking cannot repair a broken connection or fix a fried chip.

Common Questions

Warranties: This bill will not require any changes to manufacturer's warranty policies. Most independent repair is post-warranty repair and used to extend the use of the product rather than replace the product.

Product Replacements: There are products with very short market lifespans. This bill will not impact the ability to innovate and make new and attractive products—it merely provides the owner with the option to keep what they have already bought working. Manufacturers have always had to compete against their own used products. This has been a major driver for innovation in the American automotive industry, driving manufacturers to create safer cars every year. Eliminating competition for repair also eliminates the need to truly innovate.

Intellectual Property: This is the most technical of questions and deserves elaboration. The act of repair is not an act of infringement. The use of manufacturer-provided diagnostics is not infringement, nor is the use of manufacturer-provided patches and fixes. Restoring the product to functions as specified does not proliferate or pirate IP. Even so, there are a number of manufacturers making claims that legal repair somehow harms their IP. These claims are legally unjustified, but are used to frighten customers away from legitimate repair businesses.

However, there are products which are designed with software functions to prevent unauthorized use of the machine. The IP for these security functions is withheld for some products in order to thwart piracy of other IP—preventing copying of movies on a DVD player, for example. This often impacts repair because opening the machine with a digital "key" is not always distinguished from opening the machine to do something illegal. We do not want to ignore these problems and are working with intellectual property concerns to comply with in-chip IP protections. Past Automotive Right to Repair legislation has incorporated satisfactory compromises around locksmith access to electronic keys, for example.

Opposition: No bills are without detractors. Manufacturers will fight legislation that interferes with their high-margin repair pricing. We expect that manufacturers of products built cheaply in Asia will object, because the option to repair equipment interferes with their business model based on churning out rapidly obsolete product replacements. Even so, many quality American manufacturers and retailers support right to repair. Over the long run, free market competition is good for everyone, including the manufacturers who can market the quality and durability of their products.

Political Landscape: This is not a partisan issue, but the aftermarket auto industry worked in Massachusetts because of its history as a pro-consumer state. 88% of voters in Massachusetts supported a right to repair ballot measure, even after the bill had passed in the legislature and had minimal advertising supporting it. The wired generation is also enthusiastic: 114,000 signatures were delivered to the White House in protest of the Librarian of Congress' decision to make mobile device unlocking illegal. These younger people are typically not traditional conservative voters, which is an enormous opportunity for outreach.

Local recyclers and environmental organizations are also highly supportive of DRTR. Fast product replacements have led to an unprecedented amount of electronic waste, and state budgets are struggling with significant disposal costs.

We believe free-market conservatives also see the importance of open markets and competition to spur job growth. Right to Repair is both an opportunity to lead on a populist issue and produce genuinely bi-partisan legislation.

The Presenters

Gay Gordon-Byrne is the Executive Director of the Digital Right to Repair Coalition. She is not a lawyer or a lobbyist, but an expert in the technology repair industry from a policy perspective. She worked directly for, and in competition with, most enterprise technology companies over the past 30 years. Gay is the author of the upcoming book "Buying Hardware, Software, and Support for Electronics, an IT Managers' Guide" coming out this spring from Taylor & Francis.

Kyle Wiens is the co-founder of the largest online repair manual, iFixit, which has developed repair manuals, tools, and parts for consumers and mobile device repair shops. iFixit's millions of active members represent consumers and repair businesses in all 50 states. Kyle is a software engineer, is active internationally working on issues of e-waste, repair, and intellectual property, and is a well-known writer for Wired Magazine, Atlantic Monthly, and many other publications.

The Digital Right to Repair Coalition was founded in July of 2013 by multiple trade organizations representing aftermarket sales and repair businesses throughout the world.

References

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Contact Information:

The Digital Right to Repair Coalition website is www.digitalrighttorepair.org

Gay Gordon-Byrne, Executive Director

973-949-5164 (office) gbyrne@digitalrighttorepair.org

Digital Right to Repair

Background: Independent repair businesses are struggling to survive, but at the same time owners of equipment with digital electronics are unable to keep their equipment operational. Usable products and device components are scrapped instead of salvaged, fixed, and reused. We need to support local repair businesses' ability repair our products.

Consider if the only source of repair for your out-of-warranty car was the OEM's dealer. What if the dealer held the only codes to access the diagnostic system? What if you lived hundreds of miles from the nearest dealer and all the local mechanics were not allowed to repair your car? This is happening with electronics service today. Further, if a product cannot be economically repaired, it cannot be resold, which pushes consumers to replace their products more and more frequently.

Philosophy: Consumers have the right to repair their own products or have them serviced at independent repair facilities. Consumers and product owners should have the right to decide who repairs their products.

Policy Objectives: Allow owners and independent repair facilities to have access to the same diagnostic, repair information, and parts made available to the manufacturers' dealers and authorized repair facilities.

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Each of these areas has a specific section in the bill. If any of these five areas is blocked, then repair is made difficult, inefficient, or impossible. Policies intended to thwart independent repair also thwart owner-repair so the language must be applicable to owners who can then appoint agents. Authorized repair is NOT independent repair because the authorized repair facility is an extension of the manufacturer and is never directly competitive.

Advantages

Beyond returning balance to the rights of owners to control the use of their purchases, DRTR is also advantageous to States where repair is competitively available. The largest impact is on jobs - directly as a preferred location for repair jobs, but also for business and industry for which competitive repair is attractive for cost-control.

Four Ways that DRTR Supports Local Jobs:

1. Relocating repair businesses will be attracted to states with repair-friendly statutes. This will include depot-repair operations as well as customer-facing locations.
2. Businesses with heavy tech usage will prefer to settle in states with Digital Right to Repair because those businesses will be better able to manage their tech ownership costs. This is a definite draw for major data centers and cloud hosting facilities, as well as large distribution operations and medical centers. As more and more industrial products incorporate digital parts, farmers and owners of heavy industrial equipment will see dramatic benefits.

3. Repair jobs have been lost in many markets as product replacements (particularly consumer products) drop demand for repair. Fortunately, some gaps in the manufacturer's planned obsolescence strategy have been found by organizations like iFixit. Thousands of cell phone and tablet repair shops using iFixit repair guides have sprung up around the country in the last few years—representing tens of thousands of jobs that never existed before.
4. Products that are replaced rather than repaired are mostly manufactured in Asia and benefit Asian workers. Repair is a local activity which adds skilled US jobs, mostly small business and needed in rural as well as urban areas.

Additional benefits will flow from reducing total cost of ownership for consumers, business, industry and local governments by being able to confidently use older equipment. Product replacements will be focused on the innovative improvements in new products, and not by manufacturer policies limiting repair. There will be less recycling of e-waste, which directly lowers costs of services.

Why States?

Repair is a physical action made on a specific tangible asset. As such, digital repair is always local, in the same way that auto repair is local. The Automotive Right to Repair Bill that passed in Massachusetts clearly addressed issues that were under the state's jurisdiction.

States control contracts and have a particular interest in fair and equitable terms and conditions. Many of the limitations manufacturers impose on repair are part of purchase contracts, posing a significant problem for consumers as the "boilerplate" and rarely divulge the future costs of dealer-only repair requirements.

Repair does not infringe on copyright. Changes to copyright law might help clarify how much control an owner has over functions such as "unlocking," but the repair policies addressed in this bill are independent of copyright issues. Unlocking cannot repair a broken connection or fix a fried chip.

Common Questions

Warranties: This bill will not require any changes to manufacturer's warranty policies. Most independent repair is post-warranty repair and used to extend the use of the product rather than replace the product.

Product Replacements: There are products with very short market lifespans. This bill will not impact the ability to innovate and make new and attractive products—it merely provides the owner with the option to keep what they have already bought working. Manufacturers have always had to compete against their own used products. This has been a major driver for innovation in the American automotive industry, driving manufacturers to create safer cars every year. Eliminating competition for repair also eliminates the need to truly innovate.

The Presenters

Gay Gordon-Byrne is the Executive Director of the Digital Right to Repair Coalition. She is not a lawyer or a lobbyist, but an expert in the technology repair industry from a policy perspective. She worked directly for, and in competition with, most enterprise technology companies over the past 30 years. Gay is the author of the upcoming book "Buying Hardware, Software, and Support for Electronics, an IT Managers' Guide" coming out this spring from Taylor & Francis.

Kyle Wiens is the co-founder of the largest online repair manual, iFixit, which has developed repair manuals, tools, and parts for consumers and mobile device repair shops. iFixit's millions of active members represent consumers and repair businesses in all 50 states. Kyle is a software engineer, is active internationally working on issues of e-waste, repair, and intellectual property, and is a well-known writer for Wired Magazine, Atlantic Monthly, and many other publications.

The Digital Right to Repair Coalition was founded in July of 2013 by multiple trade organizations representing aftermarket sales and repair businesses throughout the world.

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Intellectual Property: This is the most technical of questions and deserves elaboration. The act of repair is not an act of infringement. The use of manufacturer-provided diagnostics is not infringement, nor is the use of manufacturer-provided patches and fixes. Restoring the product to functions as specified does not proliferate or pirate IP. Even so, there are a number of manufacturers making claims that legal repair somehow harms their IP. These claims are legally unjustified, but are used to frighten customers away from legitimate repair businesses.

However, there are products which are designed with software functions to prevent unauthorized use of the machine. The IP for these security functions is withheld for some products in order to thwart piracy of other IP—preventing copying of movies on a DVD player, for example. This often impacts repair because opening the machine with a digital "key" is not always distinguished from opening the machine to do something illegal. We do not want to ignore these problems and are working with intellectual property concerns to comply with in-chip IP protections. Past Automotive Right to Repair legislation has incorporated satisfactory compromises around locksmith access to electronic keys, for example.

Opposition: No bills are without detractors. Manufacturers will fight legislation that interferes with their high-margin repair pricing. We expect that manufacturers of products built cheaply in Asia will object, because the option to repair equipment interferes with their business model based on churning out rapidly obsolete product replacements. Even so, many quality American manufacturers and retailers support right to repair. Over the long run, free market competition is good for everyone, including the manufacturers who can market the quality and durability of their products.

Political Landscape: This is not a partisan issue, but the aftermarket auto industry worked in Massachusetts because of its history as a pro-consumer state. 88% of voters in Massachusetts supported a right to repair ballot measure, even after the bill had passed in the legislature and had minimal advertising supporting it. The wired generation is also enthusiastic: 114,000 signatures were delivered to the White House in protest of the Librarian of Congress' decision to make mobile device unlocking illegal. These younger people are typically not traditional conservative voters, which is an enormous opportunity for outreach.

Local recyclers and environmental organizations are also highly supportive of DRTR. Fast product replacements have led to an unprecedented amount of electronic waste, and state budgets are struggling with significant disposal costs.

We believe free-market conservatives also see the importance of open markets and competition to spur job growth. Right to Repair is both an opportunity to lead on a populist issue and produce genuinely bi-partisan legislation.

Oppose Digital Right to Repair

Massachusetts is No Model for ALEC to Follow

In 2012, Massachusetts became the first and only state to pass a so called "Right to Repair" law. After failing to find support in a dozen other states and in Congress, proponents of an automobile-specific Right to Repair law found success in Massachusetts. The legislation passed in Massachusetts only applies to the unique characteristics of the automobile repair process, while the proposals for consideration before ALEC apply to a vastly more complex range of consumer products. As a result of the unbounded scope of the ALEC proposals, compliance is considerably more onerous. Under the ALEC proposals, manufacturers of every product sold with a digital component– from small calculators, flash drives, and children's toys, to home appliances, computer equipment, and even automobiles – would now face a government mandate to establish a framework by which third parties could gain access to proprietary data and information.

Digital Right to Repair Risks Exporting American Innovation

Blatant patent and trademark infringement by rogue groups in foreign countries is already an enormous drain upon the job-creators in the United States. According to the U.S. Chamber, G20 governments and consumers lose $125 billion annually from counterfeiting and piracy. Through reverse engineering, many American products are already copied, manufactured, and sold around the globe, however, the more complex the product, the more difficult the task of reverse engineering. Requiring wide distribution of all embedded data will likely result in a greatly simplified counterfeiting process.

Digital Right to Repair Works Against International Trade Efforts

Efforts like the Transatlantic Trade and Investment Partnership (T-TIP) are working to reduce barriers behind the customs border – such as differences in technical regulations, standards and approval procedures. Differing product standards across the U.S. and Europe cost unnecessary time and money for global-reach companies like automakers, which can increase product cost for the consumer and stifle investment. Establishing new, burdensome regulations on all digital products sold or used in the United States will only undermine efforts to increase the marketplace for American products.

Digital Right to Repair Goes Against Every ALEC Principle

ALEC's fundamental principles are Limited Government, Free Markets, and Federalism. The Digital Right to Repair proposals run counter to each and every principle. The establishment of burdensome regulations that cut across all manufacturing industries and dictate the activities of private businesses is decidedly not Limited Government. Inserting a "government-knows-best" attitude into the manufacturing marketplace and increasing the costs of doing business for all manufacturers is hardly the sign of a Free Market. Pushing a resolution that calls for Congressional intervention into the arena of policy reserved for the states is the antithesis of Federalism

AUTO ALLIANCE
DRIVING INNOVATION®

SOFTWARE LICENSES OBSTRUCT TRANSFER OF PRODUCTS

More and more everyday products, ranging from high-end servers to toasters, are distributed with pre-installed software critical to their operation. Even though the consumers buy the physical products, the manufacturers often claim that they are just licensing the pre-installed software. These licenses sometimes contain a variety of restrictive terms that interfere with resale of the products, thereby harming the consumers that want to sell equipment they no longer want and the secondary market consumers that want to buy that used equipment. Often, these secondary market consumers are federal, state, and local government entities. **Manufacturers should not be permitted to use software licenses to interfere with the resale of products.**

- **Prohibition on transfer.** Some license agreements provide that the software license is non-transferable. For example, the license for the software that comes installed on a NetApp product is not transferable. As a practical matter, NetApp gets paid twice for the right to use the same software: once by the original purchaser of the product, and a second time by the purchaser of the used product. Cisco charges the purchaser of used equipment so much for a license for the pre-installed software that it is often less expensive for the purchaser to buy new equipment.
- **Refusal to provide updates.** Some license agreements specify that routine updates such as bug-patches will be provided only to the original licensee. For example, Oracle refuses to supply routine updates to the purchasers of used products containing pre-installed Oracle software, unless they make an additional payment.
- **Bundling of maintenance contracts.** Some manufacturers will use control over the pre-installed software as a means of forcing purchasers of used equipment to buy additional services from them. IBM, example, will charge purchasers of used equipment a fee for software updates, but will provide the updates for free to purchasers that enter into maintenance agreements.

The legal fiction on which these restrictive practices is based is that the pre-installed software is licensed, not sold, to the purchaser of the hardware in which the software is installed. The manufacturers argue that because the purchaser is just a licensee of the copy of the software, it does not have rights that normally accrue to the owner of a copy, such as the right of resale or the right to make temporary internal copies necessary for the operation of a computer. *See* 17 U.S.C. §§ 109(a) and 117(a). The U.S. circuit courts are split on the validity of the manufacturers' argument. The Ninth Circuit has accepted it while the Second Circuit has rejected it.

At present, primarily manufacturers of computer and telecommunications equipment misuse software license agreements to interfere with resale. Yet as more products are distributed with pre-installed software, such as cars and consumer appliances, this problem will become more widespread.

The solution to this problem is a simple amendment stating that the statutory rights provided under Title 17 apply to both owners *and licensees* of software, and that these rights cannot be waived by contract.

No. 44. An act relating to amending consumer protection provisions for propane refunds, unsolicited demands for payment, bad faith assertions of patent infringement and failure to comply with civil investigations.

(H.299)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF PROPANE

* * *

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

* * *

(2) Subject to subdivision (h)(5) of this section:

(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no

later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

* * *

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of:

(A) $250.00 on the first day after the refund was due~~,~~; and

(B) $75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed 10 times the amount of the refund.

* * *

(h)(1) A seller who has a duty to remove a propane storage tank from a consumer's premises shall remove the tank within 20 days or, in the case of an underground storage tank, within 30 days of the earliest of the following dates:

(A) the date on which the consumer requests termination of service;

(B) the date the seller disconnects propane service; or

(C) the date on which the seller is notified by the consumer in writing that service has been disconnected.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if a consumer requests that a tank be removed on a specific day, the seller shall

remove the tank no more than 10 days after the date requested, or within the period required by subdivision (1) of this subsection, whichever is later.

(3) A seller who fails to remove a propane storage tank in accordance with this subsection shall make a penalty payment to the consumer of:

(A) $250.00 on the first day after the tank should have been removed; and

(B) $75.00 per day for each day thereafter until the tank has been removed and the penalty payments have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed $2,000.00.

(4)(A) Notwithstanding subdivision (3) of this subsection, no penalty shall be due for the time a seller is unable to remove a tank due to weather or other conditions not caused by the seller that bar access to the tank, if the seller provides within five days of the latest date the tank was otherwise required to be removed:

(i) a written explanation for the delay;

(ii) what reasonable steps the consumer must take to provide access to the tank; and

(iii) a telephone number, a mailing address, and an e-mail address the consumer can use to notify the seller that the steps have been taken.

(B) The seller shall have 20 days from the date he or she receives the notice from the consumer required in subdivision (4)(A)(iii) of this subsection to remove the tank.

(5) A consumer who prevents access to a propane storage tank, such that a seller is unable to timely remove the tank from the property or determine the amount of propane remaining in the tank in compliance with this section, shall not be entitled to a refund for propane remaining in the storage tank pursuant to subsection (e) of this section until the consumer takes the reasonable steps identified by the seller that are necessary to allow access to the tank and provides notice to the seller that he or she has taken those steps, in compliance with the process established in subdivision (4) of this subsection.

Sec. 2. IMPLEMENTATION

The penalties created in 9 V.S.A. § 2461b(h)(3) shall not accrue prior to July 20, 2013.

Sec. 3. 9 V.S.A. § 2461e is amended to read:

§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

(a)(1) Contract and solicitation requirements. A contract for the retail sale of home heating oil, kerosene, or liquefied petroleum gas that offers a guaranteed price plan, including a fixed price contract, a prepaid contract, a cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such price plans shall be disclosed. Such disclosure

shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than 12-point boldface type of uniform font. A solicitation for the retail sale of home heating oil or liquefied petroleum gas that offers a guaranteed price plan that could become a contract upon a response from a consumer, including a fixed price contract, a prepaid contract, a cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such offer shall be disclosed in plain language.

* * *

Sec. 4. 9 V.S.A. chapter 135 is amended to read:

CHAPTER 135. UNSOLICITED MERCHANDISE; SOLICITATION IN THE GUISE OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT

* * *

§ 4402. SOLICITATION IN THE GUISE OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT

(a) In this section:

(1)(A) "Solicitation" means a document that reasonably could be considered a bill, invoice, or statement of account due, but is in fact an offer to sell goods or services to a consumer that were not requested by the consumer.

(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services, provided that the offer specifies the date on which the existing agreement expires.

(2) For purposes of subdivision (1)(A) of this subsection, factors to determine whether a document "reasonably could be considered to be a bill, invoice, or statement of account due" may include:

(A) The document is described as a "bill," "invoice," "statement," "final notice," or similar title.

(B) The document uses the term "remit" or "pay" with respect to a dollar amount, or similar wording.

(C) The document purports to impose a kind of late fee or similar penalty for nonpayment.

(D) The document refers to a dollar figure as an "amount due," "amount owing," or similar wording.

(b) It is an unfair and deceptive act and practice in commerce in violation of section 2453 of this title for a person to send to a consumer through any medium a solicitation in violation of the requirements of this section.

(c)(1) A solicitation shall bear on its face the following disclaimer in conspicuous boldface capital letters of a color prominently contrasting with the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold, and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type: "THIS IS NOT A BILL. THIS IS A SOLICITATION FOR THE SALE OF GOODS OR SERVICES. YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED UNLESS YOU ACCEPT THIS OFFER."

(2) For purposes of subdivision (1) of this subsection, "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, that does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions and which is not at least as vivid as any other color on the face of the solicitation.

(d)(1) The disclaimer required in subsection (c) of this section shall be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation that reasonably could be construed to specify a monetary amount due and payable by the recipient.

(2) The disclaimer required in subsection (c) of this section shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces or modifies the required text, such as "Legal Notice Required By Law" or similar wording.

(3) The disclaimer required in subsection (c) of this section shall not, by folding or any other means, be made unintelligible or less prominent than any other information on the face of the solicitation.

(4) If a solicitation consists of more than one page, or if any page is designed to be separated into portions, the disclaimer required in subsection (c) of this section shall be displayed in its entirety on the face of each page or portion of a page that reasonably could be considered a bill, invoice, or statement of account due as required in this subsection.

Sec. 5. 9 V.S.A. § 2460 is amended to read:

§ 2460. CIVIL INVESTIGATION

(a)(1) The ~~attorney general~~ Attorney General or a state's attorney whenever he or she has reason to believe any person to be or to have been in violation of section 2453 of this title, or of any rule or regulation made pursuant to section 2453 of this title, may examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation, and may demand written responses under oath to questions bearing upon each alleged violation.

(2) The ~~attorney general~~ Attorney General or a state's attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where ~~such~~ the person resides or has a place of business or in Washington County if ~~such~~ the person is a nonresident or has no place of business within the ~~state~~ State, and may take testimony and require proof material for his or her information, and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(3) The ~~attorney general~~ Attorney General or a state's attorney shall serve notice of the time, place, and cause of ~~such~~ the examination or attendance, or notice of the cause of the demand for written responses, at least ten days prior to the date of ~~such~~ the examination, personally or by certified

mail, upon ~~such~~ the person at his or her principal place of business, or, if ~~such~~ the place is not known, to his or her last known address.

(4) Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this ~~state~~ State for good cause shown, be disclosed to any person other than the authorized agent or representative of the ~~attorney general~~ Attorney General or a state's attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same.

(5) This subsection ~~(a)~~ shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b)(1) A person upon whom a notice is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by the order of a court of this ~~state~~ State.

(2) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice, or mistakes or conceals any information, shall be ~~fined~~ subject to a civil penalty of not more than ~~$5,000.00~~ $25,000.00 and to recovery by the Attorney General's or state's attorney's

office the reasonable value of its services and expenses in enforcing compliance with this section.

(c)(1) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of ~~any such~~ material pursuant to this section cannot be done and ~~such~~ the person refuses to surrender ~~such~~ the material, the ~~attorney general~~ Attorney General or a state's attorney may file, in the ~~superior court~~ Superior Court in which ~~such~~ the person resides or has his or her principal place of business, or in Washington ~~county~~ County if ~~such~~ the person is a nonresident or has no principal place of business in this ~~state~~ State, and serve upon ~~such~~ the person, a petition for an order of ~~such~~ the court for the enforcement of this section.

(2) Whenever ~~any~~ a petition is filed under this section, ~~such~~ the court shall have jurisdiction to hear and determine the matter ~~so~~ presented, and to enter ~~such order or~~ one or more orders as may be required to carry into effect the provisions of this section.

(3) ~~Any disobedience of any~~ A person who violates an order entered under this section by ~~any~~ a court shall be punished ~~as a~~ for contempt ~~thereof~~ of court and shall be subject to a civil penalty of not more than $25,000.00 and to recovery by the Attorney General's or state's attorney's office of the reasonable value of its services and expenses in enforcing compliance with this section.

Sec. 6. 9 V.S.A. chapter 120 is added to read:

CHAPTER 120. BAD FAITH ASSERTIONS

OF PATENT INFRINGEMENT

§ 4195. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE

(a) The General Assembly finds that:

(1) Vermont is striving to build an entrepreneurial and knowledge based economy. Attracting and nurturing small and medium sized internet technology ("IT") and other knowledge based companies is an important part of this effort and will be beneficial to Vermont's future.

(2) Patents are essential to encouraging innovation, especially in the IT and knowledge based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs economic growth. Patent holders have every right to enforce their patents when they are infringed, and patent enforcement litigation is necessary to protect intellectual property.

(3) The General Assembly does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. The General Assembly also recognizes that Vermont is preempted from passing any law that conflicts with federal patent law.

(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost hundreds of thousands of dollars or more, can be a significant burden on small and medium sized companies.

Vermont wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.

(5) In order for Vermont companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving such information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on Vermont companies.

(6) Abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Vermont companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless. This is especially so for small and medium sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.

(7) Not only do bad faith patent infringement claims impose a significant burden on individual Vermont businesses, they also undermine Vermont's efforts to attract and nurture small and medium sized IT and other knowledge based companies. Funds used to avoid the threat of bad faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming Vermont's economy.

(b) Through this narrowly focused act, the General Assembly seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Vermont businesses from abusive and bad faith assertions of patent infringement, and build Vermont's economy, while at the same time respecting federal law and being careful to not interfere with legitimate patent enforcement actions.

§ 4196. DEFINITIONS

In this chapter:

(1) "Demand letter" means a letter, e-mail, or other communication asserting or claiming that the target has engaged in patent infringement.

(2) "Target" means a Vermont person:

(A) who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(B) who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(C) whose customers have received a demand letter asserting that the person's product, service, or technology has infringed a patent.

§ 4197. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

(a) A person shall not make a bad faith assertion of patent infringement.

(b) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(1) The demand letter does not contain the following information:

(A) the patent number;

(B) the name and address of the patent owner or owners and assignee or assignees, if any; and

(C) factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent.

(2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand letter lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.

(4) The demand letter demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and:

(A) those threats or lawsuits lacked the information described in subdivision (1) of this subsection; or

(B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(c) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in subdivision (b)(1) of this section.

(2) Where the demand letter lacks the information described in subdivision (b)(1) of this section and the target requests the information, the person provides the information within a reasonable period of time.

(3) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

§ 4198. BOND

Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under § 4199(b) of this chapter, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed $250,000.00. The court may waive the bond requirement if it finds the

person has available assets equal to the amount of the proposed bond or for other good cause shown.

§ 4199. ENFORCEMENT; REMEDIES; DAMAGES

(a) The Attorney General shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as provided under chapter 63 of this title. In an action brought by the Attorney General under this chapter the court may award or impose any relief available under chapter 63 of this title.

(b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter, may bring an action in Superior Court. A court may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(1) equitable relief;

(2) damages;

(3) costs and fees, including reasonable attorney's fees; and

(4) exemplary damages in an amount equal to $50,000.00 or three times the total of damages, costs, and fees, whichever is greater.

(c) This chapter shall not be construed to limit rights and remedies available to the State of Vermont or to any person under any other law and shall not alter or restrict the Attorney General's authority under chapter 63 of this title with regard to conduct involving assertions of patent infringement.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

Date the Governor signed the bill: May 22, 2013

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Only Compact for America Can Fix the National Debt

Using an agreement among the states called an "interstate compact," the Compact for America invokes Article V of the United States Constitution to advance a powerful Balanced Budget Amendment. The BBA would require a majority of State legislatures to approve any increase above an initial debt limit. **Like an active board of directors for our wayward federal executive and legislative branch "CEOs**," state legislatures would provide oversight and intervention when it comes to requested increases in the federal debt.

The state debt approval requirement creates flexibility to finance justifiable wars and to address genuine crises without easily exploited loopholes. If the case can be made to a majority of state legislatures that the federal government should borrow more money, then the BBA will allow such borrowing.

Some may question whether the states should have a voice in the national debt debate; but the states should have a voice for the same reason that the U.S. Constitution originally gave state legislatures control over the U.S. Senate. **A centralized authority should not have a free hand in determining—or mortgaging—the future of every community in the nation**.

Long before the midnight hour arrives, the CFA's BBA is designed to compel Washington to balance its budget or prepare a budget that can make the case for more debt. It would require the President to start designating spending cuts when spending exceeds 98% of the debt limit. Congress must then override those cuts within 30 days with alternatives if they disagree. This would force Washington's political players to put their cards on the table face-up long before hitting a hard debt limit, **protecting our country's credit from being held hostage**.

The CFA's BBA also recognizes that our national debt is primarily a spending problem. It requires any new or increased income or sales tax to secure two-thirds approval of both houses of Congress. Recognizing that fixing the debt may require new revenues, the amendment allows for simple majority approval of revenue increases that result from replacing the income tax code with a sales tax or reducing tax exemptions, deductions and credits. Any new tax burden would only result from making our tax code flatter, fairer and far more conducive to economic growth.

An interstate compact provides the vehicle for advancing this bipartisan national debt solution because it **transforms the state origination of a Balanced Budget Amendment into a "turn-key" operation**. With the blessing of Congress furnished by simple majority passage of a single concurrent resolution, the Compact for America empowers the states to agree **in advance** to all elements of the amendment process—from the text of the proposed BBA, to the application to Congress, to delegate appointments and instructions, to the selection of the convention location and rules, to the ultimate ratification of the BBA. In short, the Compact for America consolidates everything Congress and the States do in the Article V process into just two overarching pieces of legislation—one congressional resolution and one interstate compact joined by thirty-eight states. It thereby **cuts the time and resources needed to achieve a state-originated BBA by more than 60%**.

The Compact also eliminates any possibility of a "runaway convention." It compels all member state delegates to follow convention rules that limit the convention agenda to an up or down vote on the BBA and to return home if those rules fail to hold. It prohibits member states from expanding the scope of the convention, violating the convention rules, or ratifying anything other than the contemplated BBA. **Like a ballot measure directed to state legislators, governors and Congress, the Compact for America ensures the state-initiated constitutional amendment process efficiently, safely and exclusively advances a specific Balanced Budget Amendment.**

Compact for America is also what the People want. According to McLaughlin & Associates, popular support for a compact to advance constitutional amendments exceeds opposition **by more than two to one**. **61%** agree that a majority of state legislatures should be required to approve any increase in the federal debt. **71%** agree that Congress should cut spending before raising taxes. **86%** agree that Congress should be required to balance its budget.

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Compact for America's "Article V 2.0" Turn-Key Approach is Our Best Shot

Using an agreement among the states called an "interstate compact," the Compact for America invokes Article V of the United States Constitution to advance one or more specific constitutional amendments. An interstate compact provides the vehicle to advance constitutional amendments because it **transforms the otherwise cumbersome state-initiated amendment process under Article V into a "turn-key" operation**.

The Compact for America empowers the states to agree **in advance** to all elements of the amendment process that states control under Article V in a single enactment that can be passed in a single session. The Compact does require congressional consent to work, but such consent is achieved by simple majority passage of a congressional resolution, which consolidates everything Congress must do in the Article V process in a single enactment and in a single session. Specifically, the Compact and the counterpart congressional resolution include:

- The text of the proposed amendment (specified in the Compact);
- The Article V application to Congress (specified in the Compact);
- An interstate commission that organizes the convention (specified in the Compact);
- The convention call (specified in the congressional resolution);
- All delegate appointments and instructions (specified in the Compact);
- The convention location and rules (specified in the Compact);
- An agenda limited to the consideration of the proposed amendment (specified in the Compact);
- The ratification referral (specified in the congressional resolution);
- The ultimate ratification of the proposed amendment (specified in the Compact).

In short, the Compact for America consolidates everything Congress and the States do in the Article V process into just two overarching pieces of legislation—one congressional resolution and one interstate compact joined by thirty-eight states. It thereby dramatically **cuts the time and resources needed to achieve a state-originated constitutional amendment**. The Compact transforms the state-originated amendment process, which otherwise requires more than 100 state and congressional enactments across five or more legislative sessions, into something that can get done in a single legislative session for each member state and Congress. Rather than a legislative quest that will take ten to twenty years, the Compact can generate a constitutional amendment in as little as **one year**.

The Compact's "Article V 2.0" turn-key approach also eliminates any possibility of a "runaway convention." It compels all member state delegates to follow convention rules that limit the convention agenda to an up or down vote on the amendment it proposes and to return home if those rules fail to hold. It prohibits member states from expanding the scope of the convention, violating the convention rules, or ratifying anything other than the contemplated amendment. The Compact is **like a ballot measure directed to state legislators, governors and Congress**.

That's why Compact for America has garnered support from Congressmen David Schweikert (AZ), Paul Gosar (AZ), Lamar Smith (TX), John Culberson (TX), State Legislators Adam Kwasman (AZ), Yvette Herrell (NM), Tommy Williams (TX), Lieutenant Governor David Dewhurst (TX), the Republican Liberty Caucus, Ohioans for the Liberty Amendments, States United Balanced Budget Initiative, Idaho Freedom Foundation, Kansas Policy Institute, Pelican Institute for Public Policy (LA), Wyoming Liberty Group, Hon. Judge Harold DeMoss (U.S. Court of Appeals for 5th Circuit), Kevin Gutzman, Ph.D., J.D. (Western CT State University Professor of History), Ilya Shapiro, J.D. (Cato Institute), Nick Dranias, J.D., Sven Larson, Ph.D. (Wyoming Liberty Group Economist), Byron Schlomach, Ph.D., Kyle McAlister (Questor Pipeline Company), Ron Hicks (HerdX, Inc.), Robert C. Reinarz (R.C. Reinarz & Company), Mark McKinnon (Maverick Media), and John McLaughlin (McLaughlin & Associates).

Compact for America is also what the People want. According to McLaughlin & Associates, popular support for a compact to advance constitutional amendments exceeds opposition **by more than two to one**.

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American Legislative Exchange Council
TASK FORCE OPERATING PROCEDURES

I. MISSION OF TASK FORCES

Assume the primary responsibility for identifying critical issues, developing ALEC policy, and sponsoring educational activities which advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty. The mission will be accomplished through a non-partisan, public and private partnership between ALEC's legislative and private sector members in the specific subject areas assigned to the Task Force by the Legislative Board of Directors.

II. TASK FORCE RESPONSIBILITIES

A. Task Forces have the primary responsibility for identifying critical issues and developing ALEC's official policy statements and model legislation appropriate to the **specific subject areas** of the Task Force.

B. Task Forces serve as forums for an exchange of ideas and sharing of experiences between ALEC's state legislator and private sector members.

C. Task Forces are responsible for developing and sponsoring the following educational activities appropriate to the specific subject area of the Task Force:

- publications that express policy positions, including, but not limited to State Factors and Policy Briefs;
- educational communication and correspondence campaigns;
- issue specific briefings, press conferences and press campaigns;
- witness testimony and the activities of policy response teams;
- workshops at ALEC's conferences; and
- specific focus events.

D. The Executive Director is to develop an **annual budget**, which shall include expenses associated with Task Force meetings and educational activities. A funding mechanism to finance all meetings and educational activities proposed by Task Forces must be available before they can be undertaken.

III. GENERAL PROCEDURES

A. Requests from ALEC members for policy statements, model legislation and educational activities shall be directed by the Executive Director to the appropriate Task Force, or the Legislative Board of Directors if the issue does not fall within the **jurisdiction** of any Task Force. The appropriate Public and Private Sector Task Force Co-Chairs determine the agenda for each Task Force meeting, and the meetings will be called and conducted in accordance with these Operating Procedures.

The Director of Policy with the consent of the Executive Director assigns a model bill or resolution to the most appropriate Task Force based on Task Force content and prior jurisdictional history 35 days before a Task Force Meeting. All Task Force Co-Chairs will be provided an email or fax summary of all **model bills and resolutions 35 days before** the Task Force meeting

If both the Co-Chairs of a Task Force are in agreement that they should have jurisdiction on model legislation or a resolution, the legislation or resolution will be considered by the Task Force. If the other Task Force Co-Chairs believe they should have jurisdiction or if the author of the model bill or resolution does not agree on the jurisdictional assignment of the bill, they will have **10 days after the 35-day mailer deadline** to submit in writing or by electronic appeal to the Director of Policy their intent to challenge the jurisdiction assignment. The Director of Policy will notify the Executive Director who will in turn notify the National Chair and the Private Enterprise Advisory Council Chair. The National Chair and the Private Enterprise Advisory Council Chair will in turn refer the matter in question to the Legislative Board of Directors Task Force Board Committee. The Director of Policy will establish a conference call for the Task Force Board Committee co-chairs, the author, the affected Task Force Co-Chairs and the Director of Policy at a time convenient for all participants.

The Task Force Board Committee Co-Chairs shall listen to the jurisdictional dispute by phone or in person within 10 days of the request. If both Task Force Board Committee Co-Chairs are in agreement that the Director of Policy made an incorrect jurisdictional referral, only then will the model bill or resolution be reassigned to a committee as they specify once agreed upon by the **National Chair and the Private Enterprise Advisory Council Chair**. The bill or model resolution is still eligible to be heard in whatever Task Force it is deemed to be assigned to as if submitted to the correct Task Force for the 35-day mailer. The National Chair and the Private Enterprise Advisory Council Chair decision is final on this model bill or resolution.

Joint referral of model legislation and/or resolutions are allowed if all the affected Task Force Co-Chairs agree. All model legislation and resolutions that have been referred to, more than one Task Force must pass the identical

language in both Task Forces within two consecutive Task Force meetings. It is at the Task Force Co-Chairs discretion how they will handle the hearings of the model legislation or resolution. Both sets of co-chairs have the ability to call a working group, subcommittee, or simply meet consecutively or concurrently if necessary.

If the Task Force co-chairs both agree to waive jurisdiction, they may do so as long as another Task Force still has jurisdiction.

The National Chair and the Private Enterprise Advisory Council Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Advisory Council Chair.

B. **The National Chair and the Private Enterprise Advisory Council Chair** will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.

C. **The Legislative Board of Directors** shall have ultimate authority over Task Force procedures and actions including the authority to create, to merge or to disband Task Forces and to review Task Force actions in accordance with these Operating Procedures. Nothing in these Operating Procedures prohibits the Legislative Board of Directors from developing ALEC policy; however, such a practice should be utilized only in exceptional circumstances. Before the policy is adopted by the Legislative Board of Directors, it should be sent to the Public and Private Sector Task Force Co-Chairs under whose jurisdiction the matter falls for review and comment back to the Legislative Board of Directors.

D. The **operating cycle of a Task Force** is two years. A new operating cycle begins on January 1 of each odd numbered year and ends on December 31 of the following even numbered year. Task Force activities shall be planned and budgeted on an annual basis within each two-year operating cycle.

E. If a Task Force is **unable to develop an operating budget**, the Legislative Board of Directors will determine whether to continue the operations of the Task Force. This determination will be made according to: (1) the level of membership on the Task Force, and (2) the need for continued services developed by the Task Force for ALEC.

F. **The Legislative Board of Directors** shall have the authority to allocate limited general support funds to finance the annual operating budget of Task Forces that meet the requirements prescribed in Section III (E). The Executive Director shall determine, and report to the Legislative Board of Directors, the amount of general support funds available to underwrite such Task Forces.

IV. MEMBERSHIP AND MEMBER RESPONSIBILITIES

A. The membership of a Task Force consists of legislators who are members in good standing of ALEC and are duly appointed to the Task Force, in accordance with Section VI (A) and private sector organizations that are full members of ALEC, contribute to the assessment for the Task Force operating budget, and are duly appointed to the Task Force, in accordance with Section VI (B). Private sector organizations that were full members of ALEC and contributed the assessment for the Task Force's operating budget in the previous year, can be appointed to the Task Force for the current year, conditional upon renewal of full ALEC membership and receipt of the current year's assessment for the Task Force operating budget prior to March 31st, unless an alternative date has been approved by the Executive Director.

B. Each Task Force shall have least two **Co-Chairs**; a Public Sector Task Force Co-Chair and a Private Sector Task Force Co-Chair. The Public Sector Task Force Co-Chair must be a member of the Task Force and appointed in accordance with Section VI (A). The Private Sector Co-Chair must represent a private sector member of the Task Force and be appointed in accordance with Section VI(B). The Co-Chairs shall be responsible for:

(1) calling the Task Force and the Executive Committee meetings to order, setting the agenda and co-chairing such meetings;
(2) appointing and removing legislators and private sector members to and from the Task Force Executive Committee and subcommittees;
(3) creating subcommittees, and determining each subcommittee's mission, membership limit, voting rules, deadlines, and term of service; and
(4) selecting Task Force members to provide support for and against Task Force policies during formal Board reviews.
(5) Reviewing bills that are approaching the five year Sunset as specified in Section

C. Each Task Force shall have an **Executive Committee** appointed by the Public and Private Sector Task Force Co-Chairs that is appropriate in number to carry out the work product and strategic plan of ALEC and the Task Force. The Executive Committee shall consist of the Public Sector Task Force Co-chair, the Private Sector Task Force Co-Chair, the subcommittee co-chairs, and the remainder will be an equal number of legislative and private sector Task Force members. The Executive Committee will be responsible for determining the operating budget and proposing plans, programs and budgets for the succeeding year in accordance with (Section V (B); determining if a proposed educational activity conforms to a previously approved model bill, resolution or policy statement in accordance with (Section IX (F); and determining if an emergency situation exists that justifies waiving or reducing appropriate time limits in accordance with (Section VIII (H)).

D. Each Task Force may have any number of **subcommittees**, consisting of Task Force members and advisors to focus on specific areas and issues and make policy recommendations to the Task Force. The Task Force Co-chairs, shall create subcommittees and determine each subcommittee's mission, membership limit, voting rules, deadlines, and term of service. Any model bill, resolution or policy statement approved by a subcommittee must be approved by the Task Force and the Legislative Board of Directors before it can be considered official ALEC policy.

E. Each Task Force may have advisors, appointed in accordance with Section VI (G). **Advisors** shall assist the members and staff of the Task Force. They shall be identified as advisors on official Task Force rosters, included in all official Task Force mailings and invited to all Task Force meetings. Advisors may also have their expenses paid at Task Force meetings covered by the Task Force operating budget with the approval of the Task Force Co-Chairs. An advisor cannot be designated as the primary contact of a private sector Task Force member, cannot be designated to represent a private sector Task Force member at a Task Force, Executive Committee, or subcommittee meeting, and cannot offer or vote on any motion at a Task Force, Executive Committee, or subcommittee meeting.

V. Task Force Budgets

A. Each Task Force shall develop and operate a yearly budget to fund meetings.

B. The **operating budget** shall be used primarily to cover expenses for Task Force meetings, unless specific funds within the budget are authorized for other use by the Task Force. The operating budget shall be assessed equally among the private sector members of the Task Force. The Executive Director, in consultation with the Task Force Co-Chairs shall determine which costs associated with each meeting will be reimbursed from the operating budget.

Any funds remaining in a Task Force's operating budget at the end of a year are transferred to ALEC's general membership account.

C. The operating budget shall not be used to cover Task Force meeting expenses associated with **alternate task force members'** participation, unless they are appointed by their State Chair to attend the Spring Task Force Summit with the purpose to serve in place of a Task Force Member who is unable to attend. Task Force meeting expenses of alternate task force members shall be covered by their state's scholarship account.

D. The **programming budget** shall be used to cover costs associated with educational activities. Contributions to the programming budget are separate, and in addition to operating budget contributions and annual general support/membership contributions to ALEC. The Executive Director shall determine the contribution required for each educational activity.

VI. PROCESS FOR SELECTING TASK FORCE MEMBERS, ALTERNATES, TEMPORARY ALTERNATES, CHAIRS, COMMITTEES AND ADVISORS

A. Prior to February 1 of each odd-numbered year, the current and immediate past National chairman will jointly select and appoint *in writing three legislative Task Force Members and up to five Alternate Legislative Members* who will serve for the current operating cycle, after receiving nominations from ALEC's Public and Private State Chairs, the Executive Director and the ALEC Public and Private Sector members of the Board. At any time during the year, the National Chairman may appoint in writing new legislator members to each Task Force, except that no more than three legislators from each state may serve as members of any Task Force, no legislator may serve on more than one Task Force and the **appointment cannot be made earlier than thirty days** after the new member has been nominated. *The Temporary Alternate appointment is the only exception. Each state has one temporary alternate position available for each Task Force. No less than seven days prior to the Task Force Meeting, the State Chair may submit a Temporary Alternate appointment in writing to the Task Force Director. The Temporary Alternate does not have permanent status on the Task Force and may not introduce legislation. The appointment ends at the adjournment of the Task Force Meeting.* In an effort to ensure the nonpartisan nature of each Task Force, it is recommended that no more than two legislators of any one political party from the same state be appointed to serve as members of any Task Force. A preference will be given to those ALEC legislator members who serve on or chair the respective Committee in their state legislature.

B. Prior to January 10 of each odd-numbered year, the current and immediate past National Chair will jointly select and appoint in writing **the Task Force Chair** who will serve for the current operating cycle, after receiving nominations from

the Task Force. Nominations will be requested by the outgoing Task Force Chair and may be placed in rank order prior to transmittal to the Executive Director no later than December 1 of each even-numbered year. No more than five names may be submitted in nomination by the outgoing Task Force chair. The current and immediate past National Chairs will jointly make the final selection, but should give strong weight to the recommendations of the outgoing Task Force Chair. In an effort to empower as many ALEC leaders as possible, State Chairs and members of the Legislative Board of Directors will not be selected as Task Force Chairs. Task Force Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past National Chairs may reappoint a Task Force Chair to a second operating cycle term.

C. Prior to February 1 of each odd numbered year, the Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members of the **Task Force Executive Committee**, who will serve for the current operating cycle. The Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members and advisors to any subcommittee.

D. Prior to February 1 of each year, the Private Enterprise Advisory Council Chair and the immediate past Private Enterprise Advisory Council Chair will select and appoint in writing the private sector members to the Task Force who will serve for the current year. The appointment letter shall be mailed to the individual designated as the primary contact for the private sector entity. At any time during the year, the Chair of the Private Enterprise Advisory Council may appoint in writing **new private sector members** to each Task Force, but no earlier than thirty days after the new member has qualified for full membership in ALEC and contributed the assessment for the appropriate Task Force's operating budget.

E. Prior to January 10 of each odd-numbered year, the Chair of the Private Enterprise Advisory Council and the immediate past Private Enterprise Advisory Council Chair will select and appoint in writing the **Task Force Private Sector Co-Chair** who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Private Sector Chair and may be placed in rank order prior to transmittal to the Chair of the Private Enterprise Advisory Council. The Chair and the immediate past Chair of the Private Enterprise Advisory Council will make the final selection, but should give strong weight to the recommendations of the outgoing Private Sector Task Force Co-Chair. In an effort to empower as many ALEC private sector members as possible, Private Enterprise State Chairs and members of the Private Enterprise Advisory Council will not be selected as Private Sector Task Force Co-Chairs. Private Sector Task Force Co-Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past Chair of the

Private Enterprise Advisory Council may reappoint a Task Force Private Sector Chair to a second operating cycle term.

F. Prior to February 1 of each odd-numbered year, the Task Force Private Sector Co-Chair will select and appoint in writing the **private sector members of the Task Force Executive Committee**, who will serve for the current operating cycle. The Task Force Private Sector Co-Chair shall select and appoint in writing the private sector members of any subcommittees.

G. The Public and Private Sector Task Force Co-Chairs, may jointly appoint subject matter experts to serve as **advisors** to the Task Force. The National Chair and the Private Enterprise Advisory Council Chair may also jointly recommend to the Task Force Co-Chairs subject matter experts to serve as advisors to the Task Force.

VII. REMOVAL AND VACANCIES

A. The National Chair may remove any Public Sector **Task Force Co-Chair** from his position and any legislative member from a Task Force with or without cause. Such action will not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive Task Force meetings.

B. The Public Sector Task Force Co-Chair may remove any legislative member of an **Executive Committee or subcommittee** from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive meetings.

C. The Chair of the Private Enterprise Advisory Council may remove **any Private Sector Task Force Co-Chair** from his position and any private sector member from a Task Force with cause. Such action shall not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues. .

D. The Private Sector Task Force Co-Chair may remove any **private sector member of an Executive Committee or subcommittee** from his position with cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues.

E. The Public and Private Sector Task Force Co-Chairs may remove an **advisor** from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such advisor whose removal is proposed.

F. Any member or advisor may **resign** from his position as Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, public or private sector Task Force member, Task Force advisor, Executive Committee member or subcommittee member at any time by writing a letter to that effect to the Public Sector and Private Sector Task Force Co-Chairs. The letter should specify the effective date of the resignation, and if none is specified, the effective date shall be the date on which the letter is received by the Public and Private Task Force Co-Chairs.

G. All **vacancies** for Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, Executive Committee member and subcommittee member shall be filled in the same manner in which selections are made under Section VI. All vacancies to these positions must be filled within thirty days of the effective date of the vacancy.

VIII. MEETINGS

A. **Task Force meetings** shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs. Task Force meetings cannot be held any earlier than thirty-five days after being called, unless an emergency situation has been declared pursuant to Section VIII (H), in which case Task Force meetings cannot be held any earlier than ten days after being called. It is recommended that, at least once a year, the Task Forces convene in a common location for a joint Task Force Summit. **Executive Committee meetings** shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs and cannot be held any earlier than three days after being called, unless the Executive Committee waives this requirement by unanimous consent.

All ALEC model bills and resolutions will have an original adoption date and five year sunset date which can be renewed by a vote of the Task Force Executive Committee or the full Task Force and the ALEC Legislative Board of Directors.

All bills or model resolutions that are four years from adoption date will have one year for the Task Force to review and vote on whether to extend another five years. The Task Force Director will transmit all four year old model bills and resolutions to the Task Force Executive Committee no later than **65 Days** before the next Task Force Meeting.

In the **65 Day Notice** ALEC Staff will make one of the following recommendations for each four year model bill or resolution to the Task Force Executive Committee.

- The policy should sunset
- The policy should be amended
- The policy should be retained

The Task Force Co Chairs may appoint a special committee to review the recommendations from the ALEC staff. Executive Committees are to vote **40 Days** prior the next Task Force Meeting. The Executive Committees shall vote by phone, in person, or by any electronic means.

If a two-thirds majority of the Task Force **Executive Committee votes to retain** the model bill or resolution that action is to be reported to the full Task Force. The model bill or resolution will be directly transmitted to the Legislative Board of Directors for consideration. No Task Force vote is necessary since the model bill or resolution is existing policy and both the Task Force Executive Committee and the Legislative Board of Directors will vote to extend the sunset.

If a majority of the Task Force **Executive Committee agrees to sunset, amend, or retain** the model bill or resolution the model policy moves onto the full Task Force. The Task Force Executive Committee will transmit all model bills that are to expire as sunset or that are to be amended to the full Task Force. At the Co-Chairs discretion, any bill or resolution up for task force consideration may be placed on the **consent slate** that will go before the full Task Force.

Any member of the Task Force may make a motion to separate any model bill or resolution from the Consent calendar but must have an additional four members of the Task Force rise in support to second the motion. It would take a majority of the public and private sector bill to take any action on the model bill or resolution.

All model bills retained, amended, or sunset will go before the Legislative Board of Directors for approval before adoption as described in Section IX.

B. **At least forty-five days** prior to a task force meeting any model bill, resolution or policy must be submitted to ALEC staff that will be voted on at the meeting. At least thirty-five days prior to a Task Force meeting, ALEC staff shall distribute copies of any model bill, resolution or policy statement that will be voted on at that meeting. This requirement does not prohibit modification or **amendment** of a model bill, resolution or policy statement at the meeting. This requirement may be waived if an emergency situation has been declared pursuant to Section VIII(H).

C. **All Task Force meetings are open** to registered attendees and invited guests of ALEC meetings and conferences. Only Legislative Members who serve as regular Task Force Members may introduce any resolution, policy statement or model bill. Private Sector Task Force members will be allowed to participate in the Task Force meeting discussions and be seated at the table during Task Force meetings.

D. ALEC private sector member organizations may only be represented at Task Force and Executive Committee meetings by the individual addressed in the **appointment letter** sent pursuant to Section VI (D) or a designee of the private sector member. If someone other than the individual addressed in the appointment letter is designated to represent the private sector member, the designation must be submitted in writing to the Public and Private Sector Task Force Co-Chairs before the meeting, and the individual cannot represent any other private sector member at the meeting.

E. All Task Force and Executive Committee meetings shall be conducted under the guidelines of **Roberts Rules of Order**, except as otherwise provided in these Operating Procedures. A copy of the Task Force Operating Procedures shall be included in the briefing packages sent to the Task Force members prior to each meeting.

F. A majority vote of legislative members present and voting and a majority vote of the private sector members present and voting, polled separately, are required to approve any motion offered at a Task Force or Executive Committee meeting. A **vote** on a motion to reconsider would be only with the sector that made the motion. Members have the right, in a voice vote, to abstain and to vote present by roll-call vote. In all votes a member can change their vote up until the time that the result of the vote is announced. Only duly appointed members or their designee as stated in Section VIII (D) that are present at the meeting may vote on each motion. **No proxy, absentee or advance voting is allowed.**

G. The Public Sector Task Force Co-Chair and the Private Sector Task Force Co-Chair, with the concurrence of a majority of the Executive Committee, polled in accordance with Section VIII (F), may schedule a **Task Force vote by mail or any form of electronic communication** on any action pertaining to policy statements, model legislation or educational activity. The deadline for the receipt of votes can be no earlier than thirty-five days after notification of the vote is mailed or notified by any form of electronic communication, unless an emergency situation is declared pursuant to Section VIII (H), in which case the deadline can be no earlier than ten days after notification is mailed or notified by any form of electronic communication. Such votes are exempt from all rules in Section VIII, except: (1) the requirement that copies of model legislation and policy statements be mailed or notified by any form of electronic

communication with the notification of the vote and (2) the requirement that a majority of legislative members voting and a majority of the private sector members voting, polled separately, is required to approve any action by a Task Force.

H. For purposes of Sections VIII(A), (B) and (G), an **emergency situation** can be declared by:

(1) Unanimous vote of all members of the Task Force Executive Committee present at an Executive Committee meeting prior to the meeting at which the Task Force votes on the model bill, resolution or policy statement; or

(2) At least three-fourth majority vote of the legislative and private sector Task Force members (voting in accordance with Section VIII (F)) present at the meeting at which the members vote on the model bill, resolution or policy statement.

I. Ten Task Force members shall **constitute a quorum** for a Task Force meeting. One-half of the legislative and one-half of the private sector members of an Executive Committee shall constitute a quorum for an Executive Committee meeting.

IX. *REVIEW AND ADOPTION PROCEDURES*

A. All Task Force policy statements, model bills or resolutions shall become **ALEC policy** either: (1) upon adoption by the Task Force and being deemed within the scope of ALEC's core mission affirmation by the Legislative Board of Directors or (2) 70 days after adoption by the Task Force if no member of the Legislative Board of Directors requests **a formal review by the Board of Directors**, or (3) the National Chair may request an expedited vote on any bill that passed the Task Force by a 2/3 vote and is deemed within ALEC's core mission which waives all the Board deadlines. General information about the adoption of a policy position may be announced upon adoption by the Task Force.

B. The Executive Director/Senior Director of Policy shall transmit within 20 days all Task Force policy statements, model bills or resolutions to the Executive Committee of the Board of Directors. The Executive Committee shall review and determine that each bill or model resolution is deemed within the scope of core issues. If not found to be within the scope of core issues the bill is returned to the Task Force. If the bill is found to be within the scope of core issues it shall be placed before the Board for consideration for adoption.

C. The Executive Director/Senior Director of Policy shall transmit from the Executive Committee to the full Board any policy statement, model bill or

resolution within ten days of such approval. Members of the Legislative Board of Directors shall have thirty days from the date of Task Force approval to review any new policy statement, model bill or resolution prior to adoption as official ALEC policy. Within those thirty days, any member of the Legislative Board of Directors may request that the policy be formally reviewed by the Legislative Board of Directors before the policy is adopted as official ALEC policy.

D. A member of the Legislative Board of Directors may request a formal review by the Legislative Board of Directors. The **request must be in writing** and must state the cause for such action and a copy of the letter requesting the review shall be sent by the National Chair to the appropriate Task Force Chair. The National Chair shall schedule a formal review by the Legislative Board of Directors no later than the next scheduled Legislative Board of Directors meeting. If the model bill or resolution has previously undergone a challenge before the full Board the National Chair may elect any of the following options:

- Allow for a second formal review
- Allow for a vote only at the next Board Meeting waiving Section IX (E) except for staff analysis.
- Allow for an early vote of the full board by any means of electronic communication waiving Section IX(E) except for staff analysis.

E. The review process will **consist of key members of the Task Force**, appointed by the Task Force Chair, providing the support for and opposition to the Task Force position. Position papers may be faxed or otherwise quickly transmitted to the members of the Legislative Board of Directors. The following is the review and adoption procedures:

- **Notification of Committee**: Staff will notify Task Force Chairs and the entire task force when the Board requests to review one of the Task Forces' model bills or resolutions.

- **Staff Analysis**: Will be prepared in a neutral fashion. The analyses will include:
  - History of Task Force action
  - Previous ALEC official action/resolutions
  - Issue before the Board
  - Proponents arguments
  - Opponents arguments

- **Standardized Review Format**: To ensure fairness, a set procedure will be used as the format to ensure the model bill/resolution has a fair hearing before the Board.
  - Task Force Chair(s) will be invited to attend the Board Review

- Task Force Chair(s) will decide who will present in support and in opposition for the model bill/resolution before the Board.
- Twenty minutes that is equally divided will be given for both sides to present before the Board.
- It is suggested that the Board not take more than twenty minutes to ask questions of the presenters.
- Presenters will then be excused and the Board will have a suggested twenty more minutes for discussion and vote.
- All votes will be recorded for the official record.

- **Notification of Committee**: The Director of Policy will notify presenters immediately after the vote. If the Board votes to send the model bill/resolution back to the task force, the Board will instruct the Director of Policy or another board member what to communicate.

F. **The Legislative Board of Directors can**:

(1) Vote to affirm the policy or affirm the policy by taking no action, or
(2) Vote to disapprove the policy, or
(3) Vote to return the policy to the Task Force for further consideration providing reasons therefore.

G. Task Forces may only undertake educational activities that are based on a policy statement, model bill or resolution that has been adopted as official ALEC policy, unless the Task Force votes to undertake the educational activity, in which case the educational activity is subjected to the same review process outlined in this Section. It is the responsibility of the Task Force Executive Committee to affirm by three-fourths majority vote conducted in accordance with Section VIII that an educational activity conforms to a policy statement, model bill or resolution.

X. EXCEPTIONS TO THE TASK FORCE OPERATING PROCEDURES.

Exceptions to these Task Force Operating Procedures must be approved by the Legislative Board of Directors.

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Speaker Biographies
International Relations Task Force
Federal Relations Working Group
2013 States and Nation Policy Summit
Washington, DC

Robert Alt

Robert Alt is President of The Buckeye Institute for Public Policy Solutions.

His commentary has appeared in major publications including The Wall Street Journal, The Washington Times, New York Post, U.S. News & World Report, and The San Diego Union-Tribune. Alt is a regular contributor to National Review Online, where he has published more than one hundred articles and blogs. He has provided commentary on CNN, Fox News Channel, PBS, and numerous syndicated radio programs.

In 2004, Alt spent five months in Iraq as a war correspondent.

Alt has testified before Congress multiple times, including at the confirmation hearings for Supreme Court Justice Elena Kagan, before the Senate Judiciary Committee concerning the Supreme Court's approach to its business law docket, before the House Judiciary Committee regarding the Terrorist Surveillance Program and the Foreign Intelligence Surveillance Act (FISA), and before the Federal Election Commission regarding matters of constitutional and administrative law. He has also testified before the Ohio General Assembly, and before Ohio's Eminent Domain Task Force.

Prior to leading The Buckeye Institute, he was a Director in the Center for Legal and Judicial Studies, under former U.S. Attorney General Edwin Meese III, at The Heritage Foundation, where he remains a Visiting Senior Legal Fellow. He is a Fellow in Legal and International Affairs at the Ashbrook Center at Ashland University, where he serves on the Board of Advisors and has taught constitutional law and political parties and interest groups. He also previously taught national security law, criminal law, and legislation at Case Western Reserve University School of Law. He is a regular speaker at dozens of universities and law schools across the country.

Alt graduated from The University of Chicago Law School, following which he clerked for Judge Alice Batchelder of the U.S. Court of Appeals for the Sixth Circuit. He holds a Bachelor of Arts degree in political science and philosophy from Azusa Pacific University. Alt resides with his wife, son, and two dogs in Columbus, Ohio, and Falls Church, Virginia.

Hon. Brenda Barton

Born in Arizona's Gila Valley, Representative Barton is a fifth generation native of rural Arizona. In 1871, her great-great grandfather established the first crossing on the Colorado River, and by 1880, the family settled in Lee Valley in the White Mountains. Brenda spent her early years at the family's historic homestead in Artesia, just a few miles south of the Gila River.
Retiring in 2008 from working a 40 hour week and pulling a pay-check for over 20 years, she was first elected to the Arizona House of Representatives in 2010. Representative Barton has quickly moved up in leadership and now serves as Chairman of the House Committee for Agriculture and Water.
Representative Barton…

- Serves on the North American Council of the State Agriculture and Rural Leaders Legislative Summit
- Is the Arizona Chairman of the National State Legislator's Article V State's Convention
- Represents Arizona as a task force member of the Council of State Governments-Western States
- Is a Graduate of the Western Legislative Academy
- A Graduate of the Dodie -Londen Excellence in Public Service Leadership Program
- And a Past State Director for the AZ Federation of Republican Women

Since taking the Chair of Ag and Water, a chairmanship once held by one of the Legislature's most iconic figures Jake Flake, Representative Barton has made Arizona's agricultural industry and the security of Arizona's future water supplies her prime focus.
To those who have come to know her, Brenda is known for her love of the land and her honest welcoming style. Brenda's prime guiding principle is, "Do no harm". She strongly believes that the role of government is not to create jobs, rather to facilitate a business environment in which job creation and economies may flourish; government should be the lubricant of industry not the fuel.

Holly Carter

Holly Carter currently serves as the manager of the Federalism in Action project at State Budget Solutions. In her role, she manages the daily operations and overall strategy for the project, working to restore state sovereignty and check the power in Washington.

Prior to joining SBS, Holly served as the operations coordinator for Race Fans 4 Freedom (RF4F), a project that educates race fans about economic principles. Holly formerly worked as the policy coordinator for the Bluegrass Institute, an organization dedicated to empowering Kentuckians to take back their freedoms. Holly was a participant in the Koch Associate Program, a yearlong management and talent development program. Holly previously served as the executive director of the Network of enlightened Women (NeW), a national organization dedicated to the education and leadership of conservative college women.

A native of Tampa, Florida, Holly graduated from the University of Florida. Holly now lives in Lexington, KY, with her husband.

Rep. Jeff Dial

Arizona State Representative Jeff Dial is a resident of Chandler, a small businessman, veteran of the U.S. Army Reserve and a community leader. Twenty years ago, Representative Dial began working for his family business and was fortunate enough to learn the importance of hard work and unwavering integrity. He attends Mountain Park Community Church in Ahwatukee and is a long-time advocate of family values. Having lived in each major municipality of LD 18 — Ahwatukee, Chandler and Tempe — he understands the unique challenges and needs facing the families of his district.

Representative Dial feels it is important to be in touch with the needs and concerns of the people he represents. Personally meeting his neighbors is extremely important to Jeff because he values learning firsthand what concerns Arizona families have while sharing his message of positive reform. Throughout his many years of community service, Representative Dial has been fortunate enough to forge strong relationships with many public policy experts and still seeks their advice on a regular basis. He is thankful for the tremendous confidence the community has already shown him and continues to work hard to maintain their trust and support.

More about Representative Dial:

- Chairman, Arizona House Higher Education & Workforce Development Committee
- Member, Arizona House Financial Institutions and Technology & Infrastructure Committees
- Executive VP, Dial Chemical Inc., 2003 – Present.
  (Has worked for his family-owned small business for 20 years).
- Chairman, Arizona Family Project, 2004 – Present.
- Member, Mountain Park Community Church (Ahwatukee).
- Volunteer, American Red Cross.
  (Served on the East Valley Disaster Action Team.)
- Veteran, U.S. Army Reserve, 1996 – 2004.

- Chairman of the Board and Co-founder, Republican Professionals.
- Republican Party, State Committeeman, 2007 – Present.
- Republican Party, Precinct Committeeman, 2002 – Present.
- Republican Party, Precinct Captain, Various Years.
- Volunteered on over 30 local, statewide, congressional and presidential campaigns.

- Alumnus, Arizona State University– B.A. – Political Science & Education.
- Organizer and Co-Captain, Neighborhood Block Watch
- Life Member, NRA

Ms. Gay Gordon-Byrne

Gay is a 35 year-veteran manager of IT hardware, software, repair and services sales. She has represented, competed against, or arranged financing for just about every major IT hardware vendor for businesses in just about every major industry. This background prepared her to develop a proprietary business analytics tool intended to help buyers of tech products evaluate hardware durability and reliability. Gay has also recently complete a book titled "Buying Software, Hardware, and Services – an IT Managers Guide" which is being published by Taylor & Francis in the spring.

For the past three years she has chaired the International Customer Competitiveness Council for the SIA where she has led the planning that became the Digital Right to Repair Coalition.

Hon. David A. Lopez

David A. Lopez is an Assistant Attorney General in the Office of the Nebraska Attorney General. In that capacity, he advises the Attorney General on the full range of issues before the office. Prior to his legal career, he was an asset manager for commercial mortgage lender AmeriSphere Multifamily Finance, L.L.C., where he oversaw a nationwide multifamily loan portfolio valued at over $1.5 billion. He also served as a legal fellow for Congressman Lee Terry (NE-2) and focused on financial services and telecommunications policy.

He has litigated in state and federal courts at the trial and appellate levels. His focus areas include environmental, constitutional, and administrative law. Other responsibilities include policy formulation and analysis, legislative strategy, and intergovernmental affairs.

He earned his J.D. from the University of Nebraska College of Law and was inducted into the Order of Barristers. He earned a B.S. in Real Estate and Land Use Economics from the University of Nebraska-Omaha. He is admitted to the bar of Nebraska and various federal courts.

Chris Moore

Chris Moore is Senior Director for International Business Policy at the National Association of Manufacturers (NAM), where he works to strengthen the global competitiveness of manufacturers in the United States by advocating for open markets, a level playing field and strong intellectual property protection in overseas markets.

Chris joined the NAM in early 2013, bringing more than 15 years of international policy experience to the job. He previously served as Director of Strategic Planning and as Deputy Director of Policy with the United Nations World Food Programme (WFP), where he worked closely with G20 governments, multilateral development banks, private sector businesses and civil society organizations to strengthen global food and agriculture supply chains and promote world food security.

Prior to joining WFP, Chris served for more than a decade as an international trade negotiator in the United States government, holding senior positions in the State Department and the Office of the U.S. Trade Representative (USTR). Most recently, he served as Deputy Assistant Secretary of State for Trade Policy and Programs, managing trade and intellectual property rights enforcement matters and leading economic negotiations with China, India, Japan and Europe. Previously, as Deputy Assistant USTR for APEC Affairs, he led intellectual property and investment negotiations in Asia and secured region-wide agreement on a comprehensive anti-counterfeiting and piracy initiative.

A native of Alabama, Chris is a graduate of Emory University and the London School of Economics. He is married and lives in Washington, DC

Ilya Shapiro

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*. Before joining Cato, he was a special assistant/advisor to the Multi-National Force in Iraq on rule of law issues and practiced international, political, commercial, and antitrust litigation at Patton Boggs and Cleary Gottlieb. Shapiro has contributed to a variety of academic, popular, and professional publications, including the *Wall Street Journal*, *Harvard Journal of Law & Public Policy*, *L.A. Times*, *USA Today*, *National Law Journal*, *Weekly Standard*, *New York Time Online*, and *National Review Online*, and from 2004 to 2007 wrote the "Dispatches from Purple America" column for *TCS Daily.com*. He also regularly provides commentary for various media outlets, including CNN, Fox News, ABC, CBS, NBC, Univision and Telemundo, *The Colbert Report*, NPR, and American Public Media's *Marketplace*. Shapiro has provided testimony to Congress and state legislatures and, as coordinator of Cato's *amicus* brief program, filed more than 100 "friend of the court" briefs in the Supreme Court. He lectures regularly on behalf of the Federalist Society and other groups, is a member of the Legal Studies Institute's board of visitors at The Fund for American Studies, was an inaugural Washington Fellow at the National Review Institute, and has been an adjunct professor at the George Washington University Law School. Before entering private practice, Shapiro clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit, while living in Mississippi and traveling around the Deep South. He holds an A.B. from Princeton University, an M.Sc. from the London School of Economics, and a J.D. from the University of Chicago Law School (where he became a Tony Patiño Fellow). Shapiro is a member of the bars of New York, the District of Columbia, and the U.S. Supreme Court. He is a native speaker of English and Russian, is fluent in Spanish and French, and is proficient in Italian and Portuguese.

Cameron Smith

Cameron Smith serves the Alabama Policy Institutes as Vice President and General Counsel.

Cameron joined API after working for several years in Washington, D.C., as Counsel in both the House and Senate. In the Senate, he worked for Senator Jeff Sessions (R-AL) as Legislative Counsel on the State Judiciary Committee. Cameron then ran the House Intellectual Property Caucus under Congressman Tom Feeney (R-FL). Most recently in the House of Representatives, Cameron served as Counsel to U.S. Congressman Geoff Davis (R-KY), a member of the House Ways and Means Committee. He also worked heavily on the REINS Act, introduced by Congressman Davis in the 112th Congress, which would provide significantly more accountability for Congress regarding the impacts of federal regulation.

Cameron graduated from Washington and Lee University and The University of Alabama School of Law. He is a member of the Tennessee and Alabama bars. Cameron and his family reside in Birmingham, Alabama.

Brad Wood

Brad Wood is the First Secretary (Agriculture). Mr. Wood is on secondment from Agriculture and Agri-Food Canada where he is a Senior Trade Policy Analyst. He will speak to the group about mandatory country of origin labelling and its international trade implications.

Kyle Wiens

Kyle Wiens is the CEO of iFixit, a collaborative repair community and Apple parts retailer. iFixit is dedicated to helping people everywhere keep their hardware running longer. In 2011, he started Dozuki, an online technical documentation platform. He co-authored the first free repair manuals for Apple hardware while studying Computer Science at Cal Poly, San Luis Obispo. Kyle is a board member of Softec and the IEEE CE Society. He has spoken widely on cloud computing, technical writing, repair, making service documentation accessible to a global audience, and sustainable consumer electronics device design. In his spare time, Kyle kayaks and tinkers with robots.

Liyou Zha

Counsellor, Congressional and Sub-National Government Affairs
Embassy of the People's Republic of China In the United States

Born in 1964 and a native of Jiangsu Province in Southern China, Mr Zha is a graduate majored in English Literature from Beijing Second Foreign Languages Institute in 1987 and an EMBA of China Europe International Business School in 1999-2011. He started his first overseas posting in the Embassy of P. R. China in the US in March 2012 after joining the Ministry of Foreign Affairs of China in 2009 where he worked in different areas such as consular affairs, personnel management and the establishment of a nation-wide training institution for diplomats in China. Prior to that, Mr. Zha served the Organizational Department of the Central Committee of Communist Party of China, the top personnel authority of the central government, for nearly 20 years, as both expert in executive education and development and chief of its Foreign Affairs Office, responsible for overseeing international cooperation projects of the Department. From 1987 through 1990, Mr. Zha worked with China Enterprise Directors Association, one of affiliate organizations of the then National Economic Commission, as project officer for international cooperation.

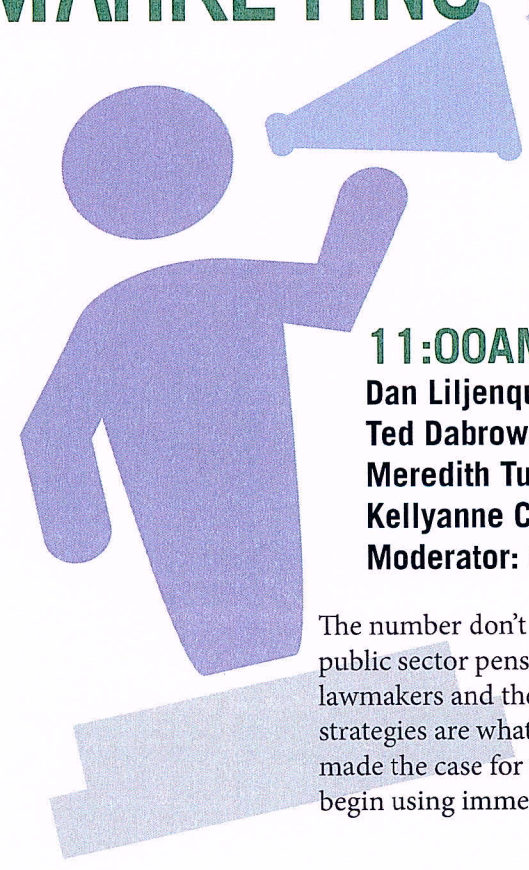
EXPANDING MEDICAID:
Compassionate OR *Corrosive?*

9:30AM - 10:45AM in Room Constitution A

Dr. Tim Shepherd, Texas family practice physician
Rep. John Adams, (R-Ohio)
Moise Brutus, Medicaid patient and paralympic athlete (left)
Moderator: Tarren Bragdon, President & CEO of the Foundation for

Next year will be critical for ObamaCare's implementation, and the choices states make will impact care for the poor, access to quality physicians, and the price of health insurance. With all of the contention surrounding the law's optional Medicaid Expansion, policymakers should be equipped to sort facts from myths. In this session, we will talk about the broken promises of ObamaCare and what state legislators can do to protect their citizens' health for the long-term.

MARKETING PENSION REFORM



TELL STORIES TO MOVE POLICY FORWARD

11:00AM-12:15PM in Room Constitution A

Dan Liljenquist, Former UT State Senator & Pension Expert
Ted Dabrowski, Vice President of Policy, Illinois Policy Institute
Meredith Turney, Communications Director, State Policy Network
Kellyanne Conway, President & CEO of the polling company, inc.
Moderator: Bob Williams, President, State Budget Solutions

The number don't lie when it comes to the impending disintegration of state public sector pensions. But we need to share more than hard numbers to educate lawmakers and the public. Emotion-evoking stories and smart communication strategies are what really persuade. Hear case studies from other legislators who made the case for their successful reform policies and take away tools you can begin using immediately.

Gene Whisnant

From: Chairman John Piscopo <smcmanamon@alec.org>
Sent: Tuesday, October 22, 2013 9:32 AM
To: genewhisnant@msn.com
Subject: Senator Ted Cruz to speak at December Summit

Tuesday, October 22, 2013

Dear Colleague,

I am happy to announce that Senator Ted Cruz will offer the keynote address on Thursday, December 5, at the States and Nation Policy Summit in Washington, D.C. at the Grand Hyatt Hotel.

There are only **two weeks left** to reserve your hotel room and register at early bird rates. I would highly encourage you to sign up now.

Don't forget to check the agenda for regular updates - we are adding to the agenda daily. Below are some highlights so you can plan ahead:

Task Force Meetings: Thursday, December 5 and Friday, December 6
The Thomas Jefferson Reception: Wednesday, December 4*
Hats Off to Texas: A 41st Annual Meeting Preview: Wednesday, December 4*
Jingle Bell Rock: The ALEC Holiday Party: Thursday, December 5*

Please join me from December 4-6 in Washington, D.C., as we end this fantastic year by celebrating ALEC's 40th Anniversary.

Rep. John Piscopo, CT (HD-76)
Chairman
American Legislative Exchange Council

(*You **must** be registered for the Summit to attend these receptions)

December 4–6, 2013
Grand Hyatt
Washington, DC

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STATES & NATION
POLICY SUMMIT

TUE. TUESDAY, DECEMBER 3		Room
12:00pm - 7:00pm	On-Site Registration	Constitution Level Registration
8:00am - 10:00am	Board of Directors Breakfast	Outside Bulfinch/Renwick
8:00am - 12:00pm	Board Committee Meeting	Renwick
8:00am - 12:00pm	Board Committee Meeting	Bulfinch
12:00pm - 1:00pm	Joint Board of Directors Lunch	Independence DE
1:00pm - 5:00pm	Joint Board of Directors Meeting	Farragut / Lafayette
12:00pm - 5:00pm	Exhibitor Set Up	Independence Foyer
1:00pm - 5:00pm	State Chairs' Training	Independence H
5:00pm - 6:00pm	State Chairs' Networking Reception	Independence E
6:00pm - 7:00pm	Joint Board of Directors Reception	Buses will depart from 10th St at 5:45pm
7:00pm - 9:00pm	Joint Board of Directors Dinner	Off-Site

WED. WEDNESDAY, DECEMBER 4		Room
7:00am - 7:00pm	On-Site Registration	Constitution Level Registration
7:00am - 5:00pm	Media Registration	Constitution Level Registration
7:00am - 9:00am	Exhibitor Set Up	Independence Foyer
7:30am - 11:15am	Communications and Technology Subcommittee Meetings E-Commerce - 7:30-8:00am • Innovation - 8:05-8:35am • Information Technology - 8:40-9:25am Consumer Protection, Critical Infastructure and Security Technologies - 9:30-10:10am Broadband - 10:15-11:15am	Wilson/Roosevelt
8:00am- 11:00am	Education Subcommittees: Digital Learning Higher Education, K-12 and NEW:STEM	Independence HI
8:00am - 9:00am	Federalism Subcommittee	Independence E
8:30am - 9:30am	Public Pension Reform Working Group	Constitution CDE
9:00am - 11:00am	State Chairs' Meeting	Constitution A
9:00am - 9:45am	First Time Attendee Orientation	Constitution B
9:00am - 3:00pm	ALEC Exhibit Hall Open	Independence Foyer
9:15am - 10:15am	Intellectual Property Subcommittee	Independence E
9:45am - 11:15am	Fiscal Policy Reform Working Group Subcommitee	Constitution CDE
9:45am - 11:15am	Joint Energy & Enviromental Subcommittee	Independence FG
10:00am - 11:00am	Workers' Compensation Subcommittee	Independence D
10:00am - 11:00am	Scope of Practice Working Group	Farragut Square
10:00am - 11:15am	The Tenth Amendment and Restoring State Sovereignty	Constitution B
10:30am - 11:30am	Transportation and Infrastructure Subcommittee	Lafayette Park
11:30am - 1:15pm	Opening Luncheon	Independence A
1:30pm - 2:45pm	Task Force Chairs Meeting	Washington Boardroom
1:30pm - 2:45pm	Workshop 1 - The Solution – A Convention of States to Restrain the Power, Scope and Jurisdiction of the Federal Government	Constitution CDE
1:30pm - 2:45pm	Workshop 2 - America's Energy Future: The Role of Distributed Generation	Constitution A
3:00pm - 4:15pm	Workshop 3 - My American Experience – Conservatism and Latino Engagement	Constitution CDE
5:30pm - 7:00pm	The Thomas Jefferson Reception	Independence A
9:00pm - 11:00pm	Hats Off to Texas: A Preview of the 41st Annual Meeting	Constitution Ballroom

THU. THURSDAY, December 5		Room
7:00am -7:00pm	On-Site Registration	Constitution Level Registration
7:00am - 5:00pm	Media Registration	Constitution Level Registration
8:00am - 9:15am	Plenary Breakfast	Independence A
9:00am - 3:00pm	ALEC Exhibit Hall Open	Independence Foyer
9:30am - 10:45am	Workshop 4 - Expanding Medicaid: Compassionate or Corrosive?	Constitution A
11:00am - 12:15pm	Workshop 5 - Marketing Pension Reform: Tell Stories to Move Policy Forward	Constitution A
12:30pm - 2:15pm	Plenary Lunch	Independence A
2:30pm - 5:30pm	Justice Performance Project	Independence E
2:30pm - 5:30pm	Health and Human Services Task Force	Constitution A
2:30pm - 5:30pm	Tax and Fiscal Policy Task Force	Constitution CDE
2:30pm - 5:30pm	International Relations Task Force	Independence I
5:30pm - 7:00pm	Jingle Bell Rock	Independence A

FRI. FRIDAY, December 6		Room
7:30am - 3:00pm	On-Site Registration	Constitution Level Registration
7:00am - 5:00pm	Media Registration	Constitution Level Registration
8:00am - 9:00am	Plenary Breakfast	Independence A
9:00am - 3:00pm	ALEC Exhibit Hall Open	Independence Foyer
9:15am - 10:30am	Workshop 6 - Patently Obvious: Curbing Litigation against Innovation	Constitution B
9:15am - 10:30am	Workshop 7 - The Impact of the Endangered Species Act on Energy Development	Constitution CDE
10:45am - 12:00pm	Workshop 8 - EPA Regulatory Overreach on "Section 111" CO^2 Performance Standards: What We Expect and Actions States Can Take	Constitution CDE
10:45am - 12:00pm	Workshop 9 - The Disclosure Ruse: A Campaign to Restrict Corporate Speech	Constitution B
12:15pm - 2:15pm	Closing Lunch	Independence A
2:30pm - 5:30pm	Civil Justice Task Force	Constitution B
2:30pm - 5:30pm	Commerce, Insurance, and Economic Development Task Force	Independence BCD
2:30pm - 5:30pm	Communications and Technology Task Force	Constitution CDE
2:30pm - 5:30pm	Education Task Force: *Promoting Excellence* NEW: STEM	Lafayette Park & Farragut Square
2:30pm - 5:30pm	Energy, Environment and Agriculture Task Force	Independence FGH
3:00pm - 5:30pm	Exhibitor Load Out	Independence Foyer
5:30pm - 6:30pm	Chair's Reception (by invite only)	Independence A
7:00pm - 11:00pm	State Night	offsite